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ADMINISTRATIVE
OF THE
BRITISH COLONIES
VOLUME I

THE
ADMINISTRATION
OF THE
BRITISH COLONIES

THE
ADMINISTRATION
OF THE
BRITISH COLONIES.

V O L. I.

LONDON:
WALTER & WALTER,
10, ABchurch Lane, CHANCERY Lane, W.C.

THE
ADMINISTRATIVE
OF THE
BRITISH COLONIES
THE FIFTH EDITION
WHEREIN THEIR
RIGHTS AND OBLIGATIONS

Are discussed and stated.
BY THOMAS FOWELL
Esq. Barrister at Law,
and formerly Secretary to the
Colonial Office.

IN TWO VOLUMES.
VOL. I.

Printed by J. G. & J. H. Sturges,
Printers to the Admiralty, Strand.

L O N D O N
Printed for J. WALTER
AT HOMER'S HEAD, CHANCERY-LANE.

M.DCC.LXXIV.

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T H E
ADMINISTRATION
OF THE
BRITISH COLONIES.
THE FIFTH EDITION.

WHEREIN THEIR
RIGHTS AND CONSTITUTION
Are discussed and stated.

By THOMAS POWNALL,
Late Governor, Captain General, Commander in
Chief, and Vice Admiral of His Majesty's Pro-
vinces, Massachusetts-Bay and South-Carolina;
and Lieutenant-Governor of New-Jersey.

IN TWO VOLUMES.

VOL. I.

*Pulchrum est benefacere Reipublicæ, etiam benedicere
haud absurdum est.* SALLUSTIUS.

L O N D O N:
PRINTED FOR J. WALTER,
AT HOMER'S HEAD, CHARING - CROSS.

M.DCC.LXXIV.

46/69/1010

(i)

TO THE RIGHT HONOURABLE
GEORGE GRENVILLE, Esq.

S I R,

WHEN I first * published my opinions upon the administration of the Colonies, I addressed the book to you. You was then minister in this country, and had taken an active and leading part in the administration of those affairs. I did not by that address dedicate, as is the usual phrase, my opinions to the minister; for our opinions differed on several points: But as disputes upon a question, (pregnant with the most dangerous consequences) began to be agitated between the minister of this country and the Colonists; which I saw, must

* 1764.

VOL. I.

A

soon

soon extend themselves in contentions with parliament itself; as I saw a spirit of suspicion and alarm arising; a temper of ill blood, infusing itself into the minds of men; I endeavoured to obviate these mischiefs, by marking in that address, that, as there were neither arbitrary intentions on one hand against the liberties of the Colonies, nor rebellious designs on the other against the just *imperium* of government; so there was a certain good temper and right spirit, which, if observed on all sides, might bring these matters of dispute to such a settlement, as political truth and liberty are best established upon.

You had conceived, that government hath a right to avail itself in its finances, of the revenues of all its dominions; *and that the imposing upon the Colonies, taxes by parliament, for the said purpose, was the constitutional mode of doing this.* The Colonists, who were not represented in parliament by knights and burgesses of their own election, * “ did apprehend, they had reason to fear

* Letters of the assembly of Massachusetts-bay.

“ some

“ some danger of arbitrary rule over them ;
 “ when the supreme power of the nation
 “ had thought proper to impose taxes on
 “ his Majesty’s American subjects, with the
 “ sole and exprefs purpose of raising a re-
 “ venue ; and without their consent.”

Parliament had, by a solemn act, declared,
 that it hath a right to make laws, which
 shall be binding upon the people of the
 Colonies, subjects of Great Britain, in *all*
cases whatsoever ;—while the Colonists say,
 in *all cases which can consist with the funda-*
mental rules of the constitution : by which
 limitation, they except the case of *taxation*
 where there is not *representation*. Hence
 the Colonists have, by many, been deemed
 factious, undutiful and disloyal ; and even
 chargeable with treason itself.—

I had been sufficiently conversant in these
 affairs, although neither employed nor con-
 sulted in them, since I left America ; to
 know that these alternate charges were false
 and groundless : that there were neither
 arbitrary intentions on one hand, nor sedi-

tious views on the other. As therefore, by my address, I meant to do justice to your principles, which I knew to be those of peace and government, established on political liberty, — so I took that occasion, as I will ever esteem it a duty to do, to bear my testimony to the affection which the Colonists have ever born to the mother country; to their zeal for its welfare; to their sense of government, and their loyalty to their sovereign; as also how much they have merited from this country, and how much they deserve to be considered by it; in order to put these matters of dispute on a footing of reconciliation, fair discussion, and equitable settlement.——

It is a great pity that questions of this nature were ever raised; * “for, it is a very
“unsafe thing in settled governments, to
“argue the reason of the fundamental con-
“stitutions.”—But when contrary propo-
sitions are alternately brought forward by the
representatives of two people, as the avowed

* Comm. Journal, 1672.

principles of their respective constituents ; when an inferior government, which invariably acknowledges its dependence on a superior and supreme government, thinks it hath a right to call into question some particular exertions of power in that government, by rules which limit the extent of the power of that government ; it is absolutely necessary either to decide such question, or to give such explanations of the matter, *that it may cease to be a question* : for so long as it continues in doubt, the parties will alternately charge each other with arbitrary principles, and a spirit of sedition, with tyranny and rebellion ;— and the consequence in fact will be, that frequent injurious acts of violence, which numberless events will ever give occasion to, must necessarily be animated with a spirit too nearly allied to the one and to the other. — The matter is in that state, that it ought to come before parliament ; it must ; it will ; — it is necessary to the support of government that it should ;—it is necessary to the security of the nation and its interest ; —it is necessary to the peace, liberties, and

constitutions of the Colonies ; it is necessary to the safety of ministers.

Many matters therefore, the publication of which I had suspended, while I thought that this question might be waved, or some way compromised ; I now publish in this edition. I continue my address, Sir, to you, now you are no longer minister, nor perhaps ever likely to be. I address myself to the private country gentleman, who will always have a great share in the business of his country ; — to Mr. George Grenville, as to one who hath, and always will have great interest, lead and authority in parliament ; from an opinion really and deeply grounded in the minds of the most serious of his countrymen, that, while for the sake of the peace and liberties of the whole, he means to support the constitutional powers of government in the crown ; so is he equally, by principle, determined, as by abilities able, to guard the civil rights of the subjects ; with a peculiar regard to, and management of, their interests in their property.

This

This American question, in which liberty and the rights of property are so deeply engaged, must now come forward. From the part which you have already taken, you must still bear a considerable part in the debates and consultations which will be held upon it. I therefore address, to your most serious consideration, that state of this business which the following book contains: nor will I despair of your assent to what so firmly establishes the rights of property, on the foundations of liberty; by *an equal extension and communication of government, to whosoever the people and dominions, having these rights, do extend.* In the matters which I propose, I speak my own sentiments, not yours. I address them to your serious consideration, as I do to every man of business in the nation; with an hope that from conviction of the justice, policy, and necessity of the measure, they may become the general sentiments of the government, and of the people, of Great Britain. From the same sentiments, and with the same view of general peace and liberty, I could wish to recommend the same propositions to the Americans.

ricans. Nor would I despair of their assent to things ; were there no jealousies of, no prejudices against men. I am convinced that these maxims are true in theory ; and do sincerely believe, that they are the only principles, by which the peace, the civil liberty, commercial prosperity and union of the British dominions, can be maintained and supported. I am no Partizan—I do not palliate the *errors* of Great Britain — I do not flatter the *passions* of America. My zeal and many services, towards the one, have appeared in the effect of those services : and my affection to the other, if it be not already known, will be seen ; as, under the accident of a certain event, I mean to end my days there in a private character.

I have, in this present edition, gone into the discussion of this matter, *as it lies in fact* ; and as it hath, at the first settlement of the Colonies, and in the different periods of their progress, *existed in right*, established on such fact. I have stated the fact ; and the right—in hopes to point out what is the true and constitutional relation between Great Britain
and

and the American Colonies ; what is the precise ground, on which this dangerous question ought to be settled : “ How far they
 “ are to be governed *by the vigour of external*
 “ *principles* ; by the supreme superintending
 “ power of the mother country : How far,
 “ *by the vigour of the internal principles* of
 “ their own peculiar body politic : And
 “ what ought to be the mode of administration, by which they are to be governed
 “ in their legislative, executive, judicial and
 “ commercial departments ; in the conduct
 “ of their money, and revenues ; in their
 “ power of making peace or war.

Analyfing by the experience of fact, this inquiry,——I mark the false policy, which derives by neceffary confequence, from ftating the Colonies as fubject only to the King, in his feignoral capacity.——I fhew alfo, that no confequences of rights can be drawn from precedents in that period, when the two houfes of parliament affumed the exercife of the fovereignty, and confidered the Colonies *as their fubjects*.——I fhew how the Colonies ought to be confidered as parts of
 the

the realm : and by showing the perplexities in reasoning, and the dangerous consequences in practice, which attend the stating of the Colonies as *without* ; and no part of the realm ; at the same time that they are stated as subjects of the King, Lords and Commons collectively taken as sovereign — I mark the false ground and superstructure of that position.

In the course of this reasoning ; while I state *how* the Colonies have been administered ; I show that the Colonies, although without the limits of the realm, are yet in fact, *of* the realm : are *annexed*, if not yet *united*, parts of the realm * ; are precisely in the predicament of the counties Palatine of Durham and Chester ; and therefore ought, in the same manner, to be *united to the realm*, in a full and absolute communication and communion of all rights, franchises and liberties, which any other part of the realm hath, or doth enjoy, or ought to have and to enjoy : in communication of the same bur-

* Vide in Appendix, N^o. I. Extract of Mr. Grenville's letter in answer to this.

thens,

thens, offices, and emoluments ; in communion of the same fœderal and commercial rights ; in the same exercise of judicial and executive powers ; in the same participation of council. — And that therefore, in the course and procedure of our government with the Colonies ; there must arise a duty in government to give, a right in the Colonies to claim, a share in the legislature of Great Britain ; by having Knights and Burgeſſes of their own election, representing them in parliament.

It makes no difference in the matter of the truth, whether the government of England ſhould be averſe to the extending of this privilege to the Colonies ; or whether the Colonies ſhould be averſe to the receiving of it :—Whether we, from pride and jealousy ; or they, from fears and doubts ; ſhould be repugnant to this union. For, whether we reaſon from *experience*, and the authority of *example* ; Or whether we conſider the policy, juſtice, and neceſſity of the meaſure ; the concluſion is unavoidably the ſame ; the propoſition invariably *true*—That *the Britiſh iſles, with our poſſeſſions in the Atlantic*

Atlantic and in America, are in FACT, UNITED INTO A ONE GRAND MARINE POLITICAL COMMUNITY: And ought therefore, by policy, to be united into A ONE IMPERIUM, in a one center, where the seat of government is: And ought to be governed from thence, by an administration founded on the basis of the whole; and adequate and efficient to the whole.

I have not stated the necessity of this measure; for * reasons, which cannot but be obvious to any prudent man: but I have ventured to affirm, that such is the actual state of the system of the British dominions; *that neither the power of government, over these various parts, can long continue under the present mode of administration; nor the great interest of commerce, extended throughout the whole, long subsist under the present system of the laws of trade.*

I do, from my best judgment, sincerely believe; that a general and intire union of the British dominions, is the only

* Look to the present events for the reasons here referred to, 1774.

measure

measure by which Great Britain can be continued in its political liberty, and commercial prosperity; perhaps in its existence.

When I had first an opportunity of conversing with, and knowing the sentiments of, the * commissioners of the several provinces in North America, convened at Albany; of learning, from their experience and judgment, the actual state of the American business and interest; of hearing amongst them, the grounds and reasons of that † *American union*, which they then had under deliberation, and transmitted the plan of to England; I then first conceived the idea, and saw the necessity, of a general *British union*. I then first mentioned my sentiment on this subject to several of those commissioners — and at that time, first proposed my considerations on a general plan of a British union.—I had the satisfaction to find many of the measures, which I did then

* Appointed by their respective provinces, to attend a congress at Albany, in 1754; to which they were called by the crown.

† Vide Appendix, N^o. IV.

propose, adopted : and the much greater satisfaction of seeing the good effect of them : But this particular measure was, at that time, I dare say, considered as theory and vision ; and perhaps may, at this time, be thought so still : Yet every event that hath since arisen ; every measure which hath since been taken, through every period of business in which I have been concerned, or of which I have been cognisant ; hath confirmed me in my idea of the state of things, and of the truth of the measure. At this period, every man of business in Britain, as well as in America, sees the effect of this state of things ; and *may, in future*, see the necessity of this measure. The whole train of events ; the whole course of business ; must perpetually bring forward into practice, and necessarily in the end, into establishment—*either an American or a British union.*—There is no other alternative.—The only consideration which remains to every good man, who loves the peace and liberties of mankind, is, whether the one or the other shall be forced into existence, by the violence of parties, and at the hazard of events ; or
I
whether

whether by the deliberate legislative advice,
of the representative of all who are con-
cerned.—

May both the Briton and the American
take this consideration to heart : and, what-
ever be the fate of parties and factions ; of
patriots or ministers ; may the true govern-
ment of laws prevail, and the rights of men
be established in political liberty !

With the highest esteem and regard, I
have the honour to be,

S I R,

Your most obedient, humble servant,

T. POWNALL.

JUNE, 1768.

THE
LAW

ADMINISTRATIVE
LAW

OF THE
UNITED STATES

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THE
ADMINISTRATION
OF THE
COLONIES.

INTRODUCTION *of the subject,*

*By a general description of the crisis which
came into event after the Peace of Paris,
settled in the year 1763.*

THE several changes of territories,
which at the last Peace took place
in the Colonies of the European
world, have given rise to A NEW SYSTEM
OF INTERESTS ; *have opened a new channel
of business ; and brought into operation a new
concatenation of powers, both commercial and
political.*—This system of things ought, at
this crisis, to be actuated by a system of poli-
tics, adequate and proportionate to its pow-

ers and operations : Yet we find not any one comprehensive or precise idea of the crisis which is now arising ; on the contrary, all that is proposed as measures, is by parts, without connection to any whole ; is the start of temporary expedient, and shiftings off of present dangers, without any reference to that eventual state of things, which must be the consequence of such measures, and such expedients.

This state of the business has tempted me to hazard my sentiments on the subject. My particular situation in time past, gave me early opportunity of seeing and observing the state of things, which have been long leading to this crisis. I have seen, and mark'd where it was my duty, this *nascent crisis* at the beginning of the late war ; and may affirm, have foreseen and *foretold* the events that now form it. My present situation, by which I stand unconnected with the politics of ministry, or of the colonies, opens the fairest occasion to me of giving to the public, whom it concerns, an impartial uninfluenced opinion, of what I think to be the right of things ; and which I have therefore given in the following sheets, altho' I am aware what effect this conduct will have, and what it has already had, on this work, and on myself. The principles on which I ground my reasoning,

reasoning, not being approved by those who govern ; nor the doctrines which I derive from these principles, as the rule of practice, by those who should be governed : the one will call this work, the vision of a theorist ; the other will represent the doctrines which it contains, as arising from the prejudices of power which I once had in my hands.—The one may think me an advocate for the politics of the colonies ; the other will imagine me to be an evil counsellor against the colonies to the ministry : But conscious that my aim is, (* without any prudential view of pleasing others, or of promoting my own interest,) to point out, and to endeavour to establish, an idea of the true interest of the colonies ; and of the mother country as related to the colonies ; I shall strictly pursue that right line, equally disregarding what varies from it on the one hand, and equally rejecting what deviates from it on the other.

In the first uncultur'd ages of Europe, when men sought nothing but to possess, and to secure possession ; the power of the sword was the predominant spirit of the world : It was that, which formed the Roman empire : and it was the same, which, in the declension of that empire, divided

* The event has proved this sense of the matter to be true. 1774.

again the nations into the several governments, formed upon the ruins of it.

When men afterward, from leisure, began to exercise the powers of their minds in (what is called) learning; Religion, the only learning at that time, led them to a concern for their spiritual interests, and consequently led them under their spiritual guides. The power of RELIGION, would hence as naturally predominate and rule; and did actually become the ruling spirit of the policy of Europe. It was this spirit, which, for many ages, formed, and gave away kingdoms; this which created the anointed Lords over them; or again excommunicated and execrated these sovereigns: this that united and allied the various nations; or plung'd them into war and bloodshed: this that formed the balance of the power of the whole; and actuated the second grand scene of Europe's history.

But since the people of Europe, have formed their communication with the commerce of Asia; have been, for some ages past, settling on all sides of the Atlantic Ocean, and in America; have been possessing every seat and channel of commerce; and have planted and raised that, to an interest which has taken root—since they now feel the powers

powers which derive from this, and are extending it to, and combining it with others ; the spirit of COMMERCE will become that predominant power, which will form the general policy, and rule the powers of Europe : and hence a grand commercial interest, (the basis of a great commercial dominion, under the present state and circumstances of the world,) will be formed and arise. THE RISE AND FORMING OF THIS COMMERCIAL INTEREST, IS WHAT PRECISELY CONSTITUTES THE PRESENT CRISIS *.

The European possessions and interests in the Atlantic and in America, lie under various forms, in plantations of sugar, tobacco, rice, and indigo ; in farms of tillage and pasture ; in fisheries ; Indian hunts ; forests ; naval stores ; and mines. Each different state, produces some special matter of supply, but is, as to its own local power of produce, totally destitute, of some other branches of supply, equally necessary to that kind of food and raiment which the present state of the world calls for. The various nature of the lands and seas, lying in every degree and aspect of climate ; and the special produce and vegetation that is peculiar to each ; forms this local limited capacity of produce. At the

* 1764.

same time that nature has thus confined and limited the produce of each individual scite, to one, or at most to few branches of supply; at the same time hath the present artificial life extended the wants of each country to many branches beyond what its own produce can supply. The West India islands produce sugar, melloffes, cotton, &c.: they want the materials for building, and mechanics; and many of the necessaries of food and raiment. The lumber, hides, fish, flour, provisions, live-stock, and horses, produced in the northern colonies on the continent; must supply the islands with these requisites—On the other hand, the sugar and melloffes of the sugar islands, is become a necessary intermediate branch, of the North American trade and fisheries. The produce of the British sugar islands, cannot supply both Great Britain and North America, with the necessary quantity: this makes the melloffes of the foreign sugar islands also, necessary to the present state of the North American trade. Without Spanish silver, (become necessary to the circulation of the British American trade, and even to their internal course of sale and purchase,) not only great part of that circulation must cease to flow; but the means of purchasing the manufactures of Great Britain would be equally circumscribed: Without the British supplies; the

Spanish

Spanish settlements would be scarce able to carry on their culture, and would be in great distress. The ordinary course of the labour and generation of the negroes in the West India islands, makes a constant external supply of these subjects necessary; and this connects the trade of Africa with the West Indies: The furr and Indian trade; and the European goods now become necessary to the Indian; are what form the Indian connection. I do not enter into a particular detail of all the reciprocations of those wants and supplies; nor into a proof of the necessary interconnections arising from thence: I only mark out the general *traites* of these, in order to explain what I mean, when I say, that by the limitation of the capacities, and the extent of the necessities of each, all are interwoven into a necessary intercourse of supplies; and all indissolubly bound in an union and communion, of *one general composite interest*, of the whole of the Spanish, French, Dutch, Danish, and British settlements. This is the *natural state* of the European possessions in the Atlantic and in America: This general communion, is that natural interest, under which, and by which, they must continue to encrease. On the contrary, the spirit of policy, by which the mother countries send out, and on which they establish colonies; being to confine the trade

of their respective colonies, solely to their own special intercourse; and to hold them incommunicable of all other intercourse or commerce—the *artificial or political state* of these colonies, becomes distinct from that which is above described, as their natural state.—The political state is that which policy labours to establish by a principle of repulsion: the natural one is that state under which they actually exist and move, by a general, common, and mutual principle of attraction. This one general interest, thus distinct; must have some one general tendency or direction distinct also, and peculiar to its own system. There must be some center of these composite movements; some lead that will predominate and govern, in this general interest. That particular branch of business, and its connections, in this general commercial interest, which is most extensive, necessary, and permanent, settles and commands the market: and those merchants who actuate this branch, must acquire an ascendancy; and will take the lead of this interest. This lead will predominate throughout the general intercourse; will dissolve the effect of all artificial connections which government would create; and form the natural connections under which these interests actually exist—will supersede all particular laws and customs; and operate by those

those which the nature and actual circumstances of the several interests require. This lead is the foundation of a commercial dominion, which, whether we attend to it or not, will be formed. Whether this idea may be thought real or visionary, is of no consequence as to the existence and procession of this power; for the interest, which is the basis of it, is already formed:—yet it would become the wisdom, and is the duty of those who govern us, to profit of, to possess, and to take the lead of it, already formed, and arising fast into dominion. It is our duty so to interweave those *nascent powers* into, and to combine their influence with, the same interests which actuate our own government; so to connect and combine the operations of our trade with this interest; as to partake of its influence, and to build on its power. Although this interest may be, as above described, different and even distinct from the peculiar interests of the mother countries, yet it cannot become independent; it must, and will for a certain period of time fall under the dominion of *some* of the potentates of Europe. The great question *at this crisis* is, and *the great struggle will be*, which of the states of Europe shall be in those circumstances, and will have the vigour and wisdom so to profit of those circumstances, as to take this interest

terest under its dominion, and to unite it to its government. This lead seemed at the beginning of the late war, to oscillate between the English and French; and it was in this war that the dominion also hath been disputed. The lead is now in our hands: We have such connection in its influence, that, whenever it becomes the foundation of a dominion, that dominion may be ours.

It is therefore the duty of those who govern us, to carry forward this state of things, to the weaving of this lead into our system, that Great Britain may be no more considered *as the kingdom of this Isle only, with many appendages of provinces, colonies, settlements, and other extraneous parts*; but as A GRAND MARINE DOMINION, CONSISTING OF OUR POSSESSIONS IN THE ATLANTIC, AND IN AMERICA, UNITED INTO A ONE EMPIRE; IN A ONE CENTER; WHERE THE SEAT OF GOVERNMENT IS.

As the rising of this crisis above described, forms precisely the *object* on which government should be employed; so the taking leading measures, towards the forming all those Atlantic and American possessions into one Empire, of which Great Britain should be the commercial and political center; is the *precise duty* of government at this crisis.

The

The great minister, whose good fortune shall have placed him at this crisis, in the administration of these great and important interests *—will certainly adopt the system which thus lies in nature; and which by natural means alone, (if not perverted,) must lead to a general dominion, founded in the general interest and prosperity of the commercial world; must build up this country, to an extent of power, to a degree of glory and prosperity, beyond the example of any age that has yet passed, † *id est viri et ducis non deesse fortunæ præbenti se, et oblata casu flectere ad concilium.*

The forming some general system of administration; some plan, which (whatever may be the changes of the ministry at home, or in the governors and officers employed abroad) should be uniformly and permanently pursued, by measures founded on the actual state of things as they arise, leading to this great end, is, *at this crisis, the precise duty of government.* This is an object which ought not to be overlooked or mistaken: It ought not to be a state mystery; nor can be a secret. If the Spanish, French, and Dutch governments can oppose it, they will; but if it be founded in nature, such opposition will only hasten its completion; because

* Dis aliter visum.

† Liv. 1. 28. § 44.

any measures of policy which they can take to obstruct it, must either destroy the trade of their own colonies, or break off their connection with them. If they attempt to do this by force, they must first form an alliance, and settle the union of their mutual interests, and the eventual partition of the effect of it: but this will prove a matter of more difficulty, than can easily be compassed; and under the disadvantages created thereby, there will be much hazard of the utmost effort of their united forces.

C H A P. I.

The Necessity of forming a State Office for administering the business of the Colonies, and the general commercial interests of our now extended dominions; and the nature of such discussed and described.

TO enable the British nation to profit of these present circumstances, or of the future events, as they shall successively arise in the natural proceſſion of effects, it is necessary, that the administration form itself into such establishments for the direction of these

these interests and powers, as may keep them in their natural channel ; as may maintain their due connections with the government ; and lead them to the utmost effect they are capable of producing towards this grand point.

The first spring of this direction, the basis of this government, is the administration at home. If that department of administration, which should have the direction of these matters, be not wisely and firmly bottomed ; be not so built, as to be a *practical* ;—be not so really supported by the powers of government, as to be an *efficient administration* ; all measures for the administration of these interests, all plans for the government of these powers, are vain and self-delusive : even those measures that would regulate the movements and unite the interests under a practical and efficient administration ; will become mischievous meddling impertinencies, where that is not, and must either ruin the interests of these powers, or render a breach of duty necessary to the colonies, that they may avoid that ruin.

That part of government, which should administer this great and important branch of business, ought, in the first place, to be the center of all information and application
from

from all the interests and powers which form it ; and ought from this center, to be able, fully, uniformly, and efficiently, to distribute its directions and orders. Wherever the wisdom of state shall determine that this center of information shall be fixed ; from whatever department all appointments, orders, and executive administration shall issue ; it ought somewhere to be fixed, known, of record, and undivided. That it may not be partial, it ought to extend to all times, and all cases. All application, all communication, all information should center immediately and solely in this department : this should be the spring of all nominations, instructions, and orders.—It is of little consequence where this power of administration is placed, so that the department be such, as hath the means of the knowledge of its business—is specially appropriated to the attention necessary to it—and officially so formed as to be in a capacity of executing it. Whether this be a Secretary of State, or the Board of Trade and Plantations, is of no consequence : but it ought to be entirely in either the one or the other. Where the power for the direction is lodged, there ought all the knowledge of the department to center : therefore all officers, civil or military, all servants of the government, and all other bodies or private persons, ought to correspond immediately

immediately with this department, whether it be the Secretary of State or the Board of Trade. While the military correspond with the Secretary of State; the civil in one part of their office, with the Secretary of State, in another with the Board of Trade; while the navy correspond in matters not merely naval, with the Admiralty; while the engineers correspond with the Board of Ordnance; officers of the revenue with the several boards of that branch; and have no communication with the department, which has, or ought to have, the general direction and administration of this great Atlantic and American, this great commercial interest, Who will be the person that can collect; who does, or ever did collect, into a one view, all these matters of information and knowledge? What department ever had, or could have, such general direction of it; as to discuss, compare, rectify and regulate it, to an official real use? In the first place, there never was yet any one department form'd for this purpose: and in the next, if there was, let any one acquainted with business dare to say, how any attempt of such department would operate on the jealousies of the others. Whenever, therefore, it is thought proper (as most certainly it will, some time or other, tho' perhaps too late) to form such department; it must (if I may
so

so express myself) be sovereign and supreme, as to every thing relating to it: or to speak plainly out, *must be a secretary of state's* office in itself.* When such is form'd; altho' the military, naval, ordnance, and revenue officers, should correspond, in the matters of their respective duties, with the departments of government to which they are more immediately subordinate and responsible; yet, in general matters of information, or points which are matters of state, and the department of this state office; they should be instructed to correspond and communicate with this minister. Suppose that some such minister or office now existed; is it not of consequence, that he should be acquainted with the Geography of our new acquisitions? If, therefore, there have been any actual surveys made of them; should not such, or copies of such, be sent to this minister or office? If a due and official information of any particular conduct in our colonies, as to their trade, might lead to proper regulations

* An office of Secretary of State for the plantations in America, was erected since the writing of the above, 1764. But as it was sown in jealousy; so, in proportion as it arose in power, the resistance of cabinet faction obstructed it at home, and nursed up opposition to it abroad. To this an impracticable line of conduct, mistaken for system, and an unhappy tone of government misunderstood for firmness, gave ample scope; so that the last state of this unfortunate department became worse than the first. 1772.

therein, or might point out the necessity of a revision of the old laws, or the making further provision by new ones; would it not be proper that the custom-house officers, settled there, should be directed to correspond and communicate with this minister, or office, on these points? Would it interfere with their due subordination, (as officers of the revenue,) to the commissioners of the customs? If there were any events arising, or any circumstances existing, that might affect the state of war or peace; wherein the immediate application of military operations were not necessary or proper; should not the military and naval officers be directed to communicate on these matters with this minister, or office? Should not, I say, all these matters of information, come officially before this minister, if any such state minister, or office, was established?

As information and knowledge should center in one office; so also the power of executing, should spring from one undivided department. Where the power of nominating and dismissing, (together with other powers,) is separated from the power of directing; the first must be a mere privilege or perquisite of office, useless as to the king's business, or the interest of his colonies; and the latter must be inefficient. That office, which

neither has the means of information, nor can have leisure to attend to the official knowledge produced thereby, when such information is directed to it; nor will be at the trouble to give any official directions, as to the ordinary course of the administration of the American matters; must certainly be always, as it is, embarrassed with the power of nomination, and fetter'd with the chain of applications, which that power drags after it. On the other hand, what effect will any instructions, orders, or directions, have from that board, which has not interest to make or dismiss one of the meanest of its own officers. This, which is at present the only official channel, will be despised: the governors, nay, every the meanest of the officers in the plantations, looking up solely to the *giving power*, will scarce correspond with the *directing*—nay, may perhaps contrive to make their court to the one, by passing by the other. And in any case of improper conduct of these officers, of any neglect of duty, or even of misdemeanour; what can this directing power do, but complain to the minister who nominates, against the officers appointed by him? If there be no jealousies, no interfering of interests, no competitions of interfering friends, to divide and oppose these two offices to each other; if the minister is not influenced to continue, upon the same motives upon which he

he first appointed ; if he does not see these complaints in a light of opposition to his nomination and interest ; some redress may, after a due hearing between the party and the office, be had—the authority of the board may be supported ; and a sort of remedy applied to the special business ; but a remedy, worse than the disease—a remedy that dishonours that board ; and holds it forth to the contempt of those, whom it ought to govern.

It is not only from the natural impracticability of conducting this administration under a divided state of power and direction, that the necessity of forming a some one state office, or minister of state, arises ; but the very nature of the business of this department, makes the officer who is to administer it a state officer ; a minister for that department ; and who ought to have immediate access to the closet. I must here repeat, that I am no partizan of the Secretary of State's office, or for the Board of Trade : I have ceased to have any connection of business with either, and have not the least degree of communication with the one or the other. Without reference, therefore, to either, but with all deference to both, I aim to point out, that the department of the administration of Trade and Plantations, be it

loded where it may, should be a State office, and have a minister of state. That office, or officer, in a commercial nation like this*, “ who has the cognizance and direction (so far as government can interfere) of the general trade of the kingdom—whose duty it is to be the depository and reporter of the state and condition of it; of every thing which may advance or obstruct it, of the state of manufactures, of the fisheries, of the employment of the poor, of the promoting the labour and riches of the country, by studying and advising every advantage, that can be made of every event which arises in commercial politics, every remedy, which can remove any defect or obstruction;—who is officially to prepare every provision or revision necessary in the laws of trade, for the consideration of parliament; and to be the conductor of such thro’ the necessary measures”—is certainly an officer of state, if the Secretary of State, so call’d, is. That office, or officer, who has “ cognizance and direction of the plantations in every point of government, in every matter judicial or commercial; who is to direct the settlements of colonies, and to superintend those already settled; who is to watch the

Abstract of the commission of the Board of Trade.

“ plantations in all these points, so far as
 “ they stand related to the government,
 “ laws, courts and trade of the mother
 “ country”—is certainly an officer of state,
 if the Secretary of State, so called, is. That
 office, or officer, who is “ to report to his
 “ Majesty in council on all these points;
 “ whose official *fiat*, or negative, will be his
 “ Majesty’s information in council, as to
 “ the legislature in the colonies”—is cer-
 tainly an officer of state. That office, or
 officer, who is “ to hear and determine on
 “ all matters of complaint, and mal-admi-
 “ nistration, of the crown officers and others,
 “ in the plantations; and can examine wit-
 “ nesses on oath”—is surely an officer of
 state. “ That office, or officer, who is to
 “ correspond with all the servants of the
 “ crown on these points, and to be the is-
 “ suer of his Majesty’s orders and instruc-
 “ tions to his servants, on these many, great,
 “ and important points of state”—is cer-
 tainly his Majesty’s secretary, and certainly
 a secretary of state.

But if it be considered further, who the
 persons are, that are of this very great and
 extensive commission of the Board of Trade
 and Plantations; namely, all the great offi-
 cers of state for the time being; with the
 bishop of London; the secretaries of state

for the time being ; and those more especially called the commissioners of trade ; it will be seen, that it is no longer a doubt or a question, as to its being an office of state : it is actually so ; and has, as an office, as a board, immediate access to his Majesty in council, even to the reporting and recommending of officers. This was the plan whereon it was originally founded, at its first institution, by Lord Sommers.

That great statesman and patriot saw that all the powers of government, and several departments of administration disunited, were interfering with, and obstructing each other on this subject : and not they only here in England ; but that the respective officers of these several departments, carried all this distraction into the detail of their business in the colonies ; which I am afraid is too much the case even at this day : he saw that this administration could not be conducted but by an intire union of all the powers of government ; and on that idea formed the board of trade and plantations ; where, and where alone, these powers were *united in a one office*. In which office, (and in which alone,) all the business of the colonies ought therefore to be administered : for if such union be necessary, here alone is that *official union*. Unhappily for the true interest of government

ment partly from an intire neglect of this administration in time past, and partly from the defective partial exercise of it, since some idea of these matters began again to revive: this great and wise plan hath been long disused.

The only question at present is, who shall be the executive officer of this department of state? whether the secretary of state, properly so called; or the first lord, and other commissioners, properly called *the board of trade*; or whether it shall remain divided, as it is, between the several great departments of administration; *or whether some more official and practical division of this administration, may not be made?*

It cannot lie in the board of trade, properly so called, until it be found proper, and becomes a measure of government, to erect that board into a secretary of state's office for this department. That, therefore, the great business of trade and plantations, may not run into confusion, or be at a stand—that it may be carried to the effect proposed, held forth, and desired by government, and necessary to it; all that can be done * at pre-

* 1764.

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sent is, to put the whole executive administration, the nomination, correspondence, issuing of instructions, orders, &c. under the two secretaries of state; if they have leisure to attend to it, and can undertake it: and to make the board of trade, a mere committee of reference and report: instead of reporting to the king in council, to report to this united office, who shall lay the matters before his Majesty, and receive and issue his orders—who shall refer all matters to this committee, for their consideration; and shall conduct through the legislature, all measures necessary to be determined thereby. If this be not practicable; there is no other alternative, than to do directly what ought to be done, and what, some time or other, must be done; the making the officer who conducts this department, a minister for that department; with all the powers necessary thereto. For until a practical and efficient administration be formed; (whatever the people of this country may think;) the people of the colonies, who know their business much better than we do, will never believe government is in earnest about them, or their interest; or even about governing them: and will, not merely from that reasoning, but from necessity of their circumstances, act accordingly.

Until

Until an effective administration for Colony affairs be established by government; all plans for the governing of those countries, under any regular system of policy, will be only matter of speculation, and become mere useless opprobrious theory. All official information given and transmitted by those whose duty it is to give it; will, as accident shall decide; or as the connexions of parties shall run; be received or not: nay, it may so happen, that those officers who should duly report to government the state of these matters; will, as they find themselves conscientiously or politically disposed; direct that information to those who are in, or to those who are out of administration. Every leader of every little flying squadron will have his runner; his own proper channel of information: and will hold forth his own importance in public, by bringing *his plan* for American affairs before it. All true and regular knowledge of these affairs, being dispersed, will be evaporated: every administration, even Parliament itself, will be distracted in its councils, by a thousand odds and ends of proposals; by a thousand pieces and parcels of plans; while those surely, who are so deeply concerned as the Americans themselves are, will not be excluded from having their plan also: they will

will have their plan also : for however peaceably they may submit to the direction of the powers of government, derived through a regular established permanent mode of administration, they will by any means that they can justify, refuse to have their interests directed and disposed of by every whim that every temporary empiric can force into execution. If therefore we mean to govern the Colonies ; we must previously form at home, some practical and efficient administration, for Colony affairs.

Before the erection of the Board of Trade as a particular office ; the business of the Colonies was administered with efficiency : the king himself in council, administered the government of his Colonies : the state officer, each in his proper department, was no otherwise Minister, than as ministerially executing the orders which he received ; or officially reporting from his respective department, the information which he had to lay before the king in council. Since the establishment of that office, called the Board of Trade ; the administration of the Colonies, has either lain dormant, or been overlaid : or, if taken up, become an occasion of jealousy and struggle for power, between that Board, and every state officer who hath
been

been deemed the Minister for the time being. From this jealousy, and this struggle, this Board hath been supposed to interfere at different times with every other office; while at one time it hath had the powers, and held the port of a minister's office; and at another, hath become a mere committee; inefficient as to execution; unattended to, as reporting. The Colonies, and the officers of the Colonies, have one while been taught to look up to this Board, as the Minister for their affairs: and at another, have learned to hold it in that contempt, which inefficiency gives; which contempt, however, hath not always stopped there.

To prevent, on this critical occasion, all such appearances on one hand, from misleading those who are to be governed; and to put an end on the other, to all interfering amongst those who are to govern in this line of business—The Board of Trade should either be made what it never was intended to be, a Secretary of State's office for the Plantations; or be confined to what it really is, a committee of reference for examination and report, for stating and preparing business; while the affairs of the Colonies should be administered solely by the King in council, really acting as an efficient board for that purpose.

purpose. Somewhere there ought to be an efficiency; and in this supreme board, is the proper residence of it. To place it here, would be really, and in fact, the establishing of an administration for colony affairs.

CHAP. II.

Leading measure proposed whereby to collect such real information of the general state of things, and of the temper of men, in the Colonies, as may become the basis of an intelligent and practical office. The two pillars of which are. A bill of rights; and a general act of commerce form the actual existing interests of the several parts of the British dominions united in one commercial system.

THE first step that such administration would take, to fix the basis of an established, permanent, and effective system of government, for the mother country and the Colonies, must be made by some *leading measure*, which shall, on real fact, and by actual representation of the parties concerned,

ed, examine into the various interests which have arisen; the various claims which are derived from those interests; and the various rights that may, or may not, be admitted, as founded on these; and as consistent with the general government and interest of the whole.

To obtain this with truth and certainty; and to engage the colonists to co-operate in this view, with that confidence which a free people must have, if they co-operate at all—government would send out to America, *some very considerable person* *, under commission and instructions to hear and examine on the spot, the state of things there; and by such proper representations and assistance,
as

* The whole of this measure as now here printed in all its parts, was, in the year 1766, proposed to his Royal Highness the Duke of York—by the author of this book. It was proposed that he should go out in his proper line of service, as commander in chief of the fleet in America: That under this character he might be charged with commission and instructions to the purport herein described. His Royal Highness very fully comprehending the scope of the measure in the whole extent of its operations, thoroughly weighing and convinced of its practicability and utility: warmed at the same time with that noble incentive, the ambition of gaining real glory by doing real good, and feeling a zeal for the king's service, engaged to undertake it—if the minister should adopt it, and his Majesty approve of it. On these grounds he
authorised

as can no where be had but upon the spot, and from the people themselves; to form such authentic matter of information, for the king in council; as may become the solid basis of *real government*, established by the principles of *real liberty*.

To such considerable person, and to such commission, only, would the colonists give their confidence: they would know that *there*, there was no spirit of party or faction; that *there* there could be no jobb—They would be convinced that government was in earnest; and meant to act fairly and honourably with them. They would meet such person in the abundance of their loyalty, with dispositions of real business in their temper, and with the spirit of real union in their hearts.

What commission could be more honourable and glorious, even to the highest character, than that of acting for the rights and liberties of a whole people, so as to be the means of establishing those rights and

authorised governor Pownall to open the matter to the minister: governor Pownall asked an audience of that minister—The proposal was however rejected, at the first opening of it. It was therefore, I suppose, never mentioned to the king.

liberties,

liberties, by an adequate system of freedom and government, extended to the whole? What can be more suited to the most elevated character, than to be the *great reconciler* between the mother country and her colonies, mis-represented to, and mis-informed of each other?

I am almost certain that this measure will not be adopted—that it will be, *as it has been already*, rejected—that there never will be any systematical union of government, between the mother country and the colonies—that the opportunity, when such might be established on true principles, will be neglected—and that the course of business will, on this occasion, be, as the history of mankind informs us it always has been; that those errors which might be rectified by the spirit of policy, will be permitted to go on piling up one mischief over another; until nothing but power can interpose: which will then interpose, when the spirit of policy is no more. The mother country and her colonies, will continue to live on in perpetual jealousies, jarrings, and disputes. The colonies, will for some time *belong to some faction here*, and be the tool of it; until they become powerful enough to hold a party for themselves; and make *some faction their tool*. The lat-

ter stage of this miserable connection, will be one continued struggle, whether Great Britain shall administer the rights and interests of the colonies, or whether the interest and power of the colonies shall hold a part and take a lead in that administration which shall govern Great Britain. This convulsion may agitate for a while; until some event shall happen, that will totally break all union between us, and will end in the ruin of the one or the other, just as the accident of the die shall turn.

Although I am convinced that this will be the state of things, yet, as I know that what I have here recommended, is founded on precedents of better and wiser times than the present; is not founded barely on my own experience, but in that of men who have long had the lead of business in those countries; is what every true friend of the colonies, who lives and has his property there, would recommend; what every man of business here, who wishes well to the government of Great Britain, must approve; I * now propose it to the public as a measure, of which if administration should neglect, or refuse to take the lead, the public may be apprised that the colonies

* 1768.

will

will profit by those means of communication with one another, and by those powers which their constitutions and establishments give them for the preservation of their civil and commercial interests: yet, taking it up, as a measure, (which, for the sake of Great Britain, I wish administration to adopt,) I say, government should send out some considerable person; with a council to assist him; under a commission and instructions; to call a congress of commissioners from the several colonies.—He should have power, and be instructed, to call to his aid and assistance, the governors, or any other his Majesty's servants, as occasion should require.

By the representations and assistance of this congress and these persons; he should inquire into the *actual* state of the crown's authority, as capable of being executed by the King, and by his governor, and other the immediate executors of the power of the crown.

He should inquire into the extent of the exercise and claim of the legislative powers; and examine dispassionately, and without prejudice, on what grounds of necessity or expediency, any precedents, which stretch

beyond perhaps the strict line of the commissions or charters, are founded.

He should inquire into the state of their laws, as to their conformity to the laws of Great Britain: and examine the real state of the facts or business, which may have made any deviation necessary, or not.

He should examine into the powers and practice of their courts of judicature—whether, on one hand, they have not extended their authority beyond their due powers; or whether, on the other hand, they have not been restrained, by instructions, or by the acts of the colony legislatures, within bounds too narrowly circumscribed, to answer the ends for which such courts are erected.

He should, (which can only be known upon the spot,) inquire into and examine the actual state of their commerce—that where it deviates unnecessarily from the laws of trade, it may be restrained by proper regulations—or, where the laws of trade are found to be inconsistent with the interest of a commercial country, having colonies which have arisen from, and depend upon trade; a revision may be made of those laws, so as that the system of our laws, may be made

to conform to the system of our commerce, and not destructive of it.

It has been often suggested, that care should be taken in the administration of the plantations, lest in some future time these colonies should become independent of the mother country. It may be proper on this occasion, nay, it is justice to say it—that if by the expression, *becoming independent*, is meant a revolt, nothing is further from their thoughts. If a defection from the alliance of the mother country be suggested, it ought to be, and can be truly said, that their heart abhors the very idea of such. Their attachment to the protestant succession in the house of Hanover, will always stand unshaken. And nothing can eradicate from their hearts *, their natural, almost mechanical affection to Great Britain; which they conceive under no other image, nor call by any other name than that of *home*. Besides the merchants are, and must ever be in great measure, allied with those of Great Britain; their very support consists in this alliance, and nothing but false policy can break it. If the trade of the colonies be protected and directed from hence, in the true spirit, rather than the letter of the act of Navigation; with that spirit under which

* This was written in 1764.

it hath risen: no circumstances of trade could tempt the colonists to certain ruin under any other connections. The liberty and religion of the British colonies are incompatible with either French or Spanish government; and they know full well that they cannot hope for that liberty which they now enjoy, as colonies under a Dutch one. Any such suggestion therefore, is a false and unjust aspersion on their principles and affection; and can arise from nothing but an intire ignorance of their circumstances. Yet again, on the other hand, while they remain under the protection of the mother country; while they profit of the beneficial part of its trade; while their attachment to the mother country is inviolate; it may become proper to inquire whether they may in some instances become and act independent of the *government and laws* of the mother country: if any symptoms should be found, either in their government courts or trade, perhaps it may be thought high time, even now [1764] to inquire how far these colonies are or are not arrived, in these cases, at an independency of the government of the mother country.—If any measure of such independency, formed upon precedents unknown to the government of the mother at the time they were formed, should be insisted on; perhaps it may be thought, that no time should

should be lost, to remedy or redress these deviations, if any such be found; or to remove all jealousies arising from the idea of them, if none such really exist.

Under all these various heads, he may hear all the grievances which the officers of the crown on one hand, or the people on the other complain of.

He should, with the assistance of his council, take under consideration the general state of the delegation and administration of the powers of the crown, as they are granted by the several boards here in England to officers of different kinds, under their respective departments: he should inquire upon the spot, and amidst the persons and things themselves, where these powers are meant to have their effect, how they do in fact operate and co-ordinate to any general system of administration. If upon any such revision of the commissions, compared with the duty to be done, he shall find that these powers are granted without any general concert: without any reference to that coincidence which they ought to have as of a one power centered in and deriving from the crown: if he shall find that the several offices and officers in America, though all branches of one stem, are by mischievous

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rivalship

rivalship of departments in England, perpetually crossing and obstructing each other: if he shall find them alternately to obstruct and to depreciate that part of the crown's power, which does not fall within their own delegation: if he shall find that while the several powers of the crown are thus by parts impeached, and rendered contemptible in the eyes of the people, the whole cannot long remain with that authority which should exert an equal and universal administration throughout the colonies: if he should find this to be the state of things, he cannot be at a loss what report to make. Nor will his Majesty and his council (if a serious intention should arise of putting the administration of the colonies on a practical and efficient footing) delay one moment to restore all these delegations of power to their true order and subordination, so that they may form a system of administration, uniform, equable, and universal.

He should inquire into the state of the King's revenues, his lands, his naval stores: and he should review the state of the military service, the forts, garrisons and forces.— With the assistance of proper commissioners from the provinces and colonies concerned; he should settle the several disputes of the colonies amongst themselves, particularly as
to

to their boundary lines : he should also inquire into all fraudulent grants of lands.

All these matters, duly examined and inquired into, a report of the whole business, should be drawn up ; and being authenticated by the original documents, which he will there procure, should be laid before the King in council : Those points which were of the special department of any of the boards or offices under government, would be referred from thence to those respective offices, for them to report their opinion upon the matter.—And when the whole, both of matter and of opinion, was by the most authentic representations, and by the best advice, thus drawn together ; the King in council would be enabled to form, and by and with the advice and authority of Parliament to establish, the only system of government and commercial laws, which would form Great Britain and her colonies into a one united commercial dominion.

If this measure be adopted ; *a general bill of rights*, and an act for the establishment of government and commerce, on a great plan of union, will be brought forward : the colonies will be considered as so many

corporations, not without, but united to the realm: they will be left in all the free and full possession of their several rights and liberties, as by charter, or commissions given: yet, for every power which they exercise or possess, they will depend upon the government of the whole; and upon Great Britain as the center. Great Britain, as the center of this system, (of which the colonies by actual union, shall become organized, not annexed parts,) must be the center of attraction, to which these colonies, in the administration of every power of their government, in the exercise of their judicial powers, in the execution of their laws, and in every operation of their trade, must tend. They will remain under the constant influence of the attraction of this center: and cannot move, but that every direction of such movement, will converge to the same. And as it is not more necessary to preserve the several governments subordinate in their respective orbs; than it is essential to the preservation of the whole empire, to keep them disconnected and independent of each other, *they must be guarded by this union, against having or forming any principle of coherence with each other, above that whereby they cohere to this center, this first mover.* They should alway remain incapable

capable of any coherence: or of so conspiring amongst themselves, as to create any other equal force, which might recoil back on this first mover. Policy, acting upon a system of civil union, may easily and constitutionally provide against all this. The colonies and provinces, as they stand at present, are under the best form as to this point, which they can be under—They are under the best frame and disposition, for the government of the general and supreme power (duly applied) to take place: having at present no other principle of civil union between each other; than that by which they naturally are, and in policy should be, in communion with Great Britain, as the common center of all. The different manner in which they are settled; the different modes under which they live; the different forms of charters, and frames of government they possess; the various principles of repulsion that these create; the different interests which they actuate; the different religious interests by which they are actuated; the rivalry and jealousies which arise from hence; and the impracticability of reconciling and accommodating these incompatible ideas and claims; will keep them for ever so, so long as the spirit of civil policy remains, and is exerted to the forming

forming and maintaining of this system of union with the mother country and its government.

The Romans as long as they governed their provinces by the vigour of policy, secured and preserved them in their dependence to the state. Let us see what that policy was. I will produce two instances, one in Italy, the other in Greece, “ *Cæterum*
“ *habitari tantum, tanquam urbem Capuam*
“ *frequentarique placuit: corpus nullum civi-*
“ *tatis nec Senatûs, nec plebis concilium, nec*
“ *magistratus esse; sine concilio publico, sine*
“ *imperio, multitudinem nullius rei inter se*
“ *sociam ad concensum inhabilem fore **.”

The other is as follows. After the Romans had intirely overcome Perseus, and reduced all Macedonia, they restored it to a certain degree of liberty; but to disarm that liberty of all power of revolt, they divide Macedon into four provinces; not barely by boundary lines, and geographical distinctions, but by dissevering and separating their interests. “ *Divisæ Macedoniae, par-*
“ *tium usibus separatis, & regionatim com-*
“ *merciis interruptis †.*

When I recommend these precedents to

* Liv. lib. 26. §. 16.

† Liv. lib. 45. §. 30.

the wisdom of government, in order to prevent any union of the several communities of colonies and provinces settled in America, independent of the kingdom of Great Britain—and to render abortive all seeds of an imperium that might extend over the whole ; it cannot I hope be misunderstood as if I recommend this system of policy in administering the government of each respective community within itself and its own internal powers of jurisdiction ; as though I recommended a dissolution of their respective charters and other establishments of government ; as though I recommended that they should have within themselves no corporations, no legislature ; that they should remain without an imperium, without a common council:—whereas on the contrary—the whole scope of this book aims so to explain, as to recommend the preservation of their respective constitutions in the full use and exercise of their rights and privileges, on the grounds of justice and policy. But I do hope and trust it will be understood as I mean it, as a caution against the laying the foundation of an *American Imperium*, separate and distinct from the kingdom of Great Britain.

On the other hand, I do think an union
of

of all the British settlements in America into a one *Imperium* with the kingdom of Great Britain, to be not only the system of the British dominions as grounded in true policy, but as actually existing by their communion in fact.

However visionary this may seem to those who judge by parts, and act by temporary expedients; if any truly great ministers, shall ever take up the administration of the colonies as a system, and shall have a general practical and adequate knowledge of such system, as interwoven in that of the mother country, they will find this measure prudent, if not a necessary one; as leading to that great and absolutely necessary measure, of uniting the Colonies to Great Britain as parts of the realm, in every degree and mode of communication, of its rights and powers: and until some steps are taken which may lead and approach to this system of union, as the interest and power of the Colonies approach to the bearing of a proportion of power and interest with that of Great Britain; the real interest of Great Britain and her colonies, will continue to be very inadequately and very unhappily administered: while the business of the Colonies shall in the mean time become a faction,

tion, instead of a constitutional part of the administration.

The center of power, instead of remaining fixed as it now is in Great Britain; will, as the magnitude of the power and interest of the Colonies increases, be drawn out from the island: this effect will arise from the operation of the same laws of nature, analogous in all cases, by which the center of gravity in the solar system, now near the surface of the sun, would, by an encrease of the quantity of matter in the planets, be drawn out beyond that surface. Knowing therefore the laws of nature, shall we like true philosophers follow, where that system leads, to form one general system of dominion by *an union of Great Britain and her Colonies; fixing, while it may be so fixed, the common center in Great Britain:* or shall we, without ever seeing that such center must be formed by an inter-communion of the powers of all the territories, as parts of the dominions of Great Britain; like true modern politicians, and from our own narrow temporary ideas of a local center; labour to keep the seat of government within Great Britain by force, against encreasing powers, which will, finally, by an overbalance from without, heave that center itself out of its place? Such measures would be almost as wise as
his,

his, who standing in a scale, should thrust his stick up against the beam to prevent it from descending, while his own weight brought it the faster down. That policy, which shall ever attempt to connect the Colonies to Great Britain, *by power*; will in that very instant, connect them *to one another in policy*.

C H A P. III.

The measure above adopted, it becomes necessary to consider the circumstances under which the first emigrations to America took place, and the nature of the first settlements of the Colonies. Of their rights as derived, in fact and according to the procedure of our government, from thence.

IF government shall determine to form an administration efficient to the real purposes of constitutional policy; the spirit of such government will thoroughly consider the circumstances under which these subjects went forth from the realm, and settled in *partibus exteris*; under what political constitutions they were established and chartered,

chartered ; and by what mode of administration their affairs have been or ought to have been conducted by the king and government of England.

When the lands of America were first discovered ; the sovereign of that subject, in each particular case, who discovered them ; either from a power given by the Pope, or from some self-derived claim ; assumed the right of possession in them. If these lands were really derelict, preoccupation might have created a right of possession : yet even in this case, some further circumstances of interconnection with that land ; such as the mixing labour with it ; must attend that occupancy, or the right would have been very defective. Where the lands were already occupied by the human species, and in the actual possession of inhabitants ; it will be very difficult to show on what true principle or grounds of justice, the Pope, or any other christian prince, assumed the right to seize on, dispose of, and grant away, the lands of the Indians in America. Surely, the divine author of our holy religion, who declared that his kingdom was *not of this world*, hath not bequeathed to christians an *exclusive charter*, giving right of possession in the lands of this world, even where the supreme Providence hath already planted inhabitants in

in the possession of it : and yet, absurd, unjust, and groundless as this claim is ; it is the only claim, we Europeans can make ; the only right we can plead. However ; the English title, is as good as any other European title ; and indisputable against any other European claim.

Let us see the first assumption and exercise of this right in our government, contained in the grant which Henry the Seventh made to Cabot.—Copy of the grant, as it is a curious act, is printed in the appendix, N° II.—It contains a grant to Cabot, and his sons, of power, to set up the King's standard in any lands, islands, towns, villages, camps, &c. which he shall discover, *not in the occupancy of any christian power :* and that this Cabot, his sons, and their heirs, *may seize, conquer, and occupy* any such lands, islands, towns, camps, or villages : and as his liege vassals, governors, locumtenentes, or deputies, may hold dominion over and have exclusive property in the same.

As the Sovereigns of Europe did thus on one hand assume, without right, a predominant claim of possession, against the Indians in these lands ; so our Sovereigns also thus at first assumed against law, an exclusive property in these lands, to the preclusion of
the

the jurisdiction of the state. They called them their foreign dominions: their demesne lands in partibus exteris: and held them as their own; the King's possessions; not parts or parcels of the realm, † “as not yet annexed to the crown.” So that when the House of Commons, (in those reiterated attempts which they made, by passing a bill to get a law enacted for establishing a free right of fishery on the coasts of Virginia, New-England, and Newfoundland,) put in the claim of the state to this property, and of the parliament to jurisdiction over it; they were told in the House by the servants of the crown, † “That it was not fit to make laws here for those countries which are not yet annexed to the crown.” ‡ “That this bill was not proper for this house, as it concerneth America.” Nay, it was doubted by others, “whether the house had jurisdiction to meddle with these matters.” And when the house, in 1624, was about to proceed upon a petition from the settlers of Virginia, to take cognizance of the affairs of the plantations; “upon || the Speaker's producing and reading to the house a letter from the king concern-

† Journal of the House of Commons, April 25, 1621.

‡ Ditto, April 29, 1621.

|| Ditto, April 29.

“ ing the Virginia petition ; the petition, “ by general resolution, was withdrawn.” And although the bill for a free fishery, to the disannulling some clauses in the King’s charters, passed the house ; as also the house came to some very strong resolutions upon the nullity of the clauses in the charters ; yet the house from this time, took no further cognizance of the plantations, till the commencement of the civil wars. Upon this ground it was, the King considered the lands, as his demesnes ; and the colonists as his subjects, in these his foreign dominions ; not his subjects of the realm or state.

The plantations were settled on these lands, by the King’s licence and grant : the constitutions and powers of government were framed by the King’s charters and commissions : and the colonists, understanding themselves as removed out of the realm, considered themselves in their executive and legislative capacity of government, in immediate connection and subordination to the King, their only sovereign lord.

In the same manner as this state and circumstances of a people migrating from, and settling in vacate countries, without, or out of the territories of the realm, operated to the

the establishment of the King's sovereignty there; (he having assumed an exclusive right to the property;) in the same manner it must and did necessarily operate, to the establishment of the people's liberty, both personal and political—They had either tacit or express permission to migrate from the realm; and to settle in places out of the realm. Those who settled under charters, had, in those charters, licence, by an express clause, to *quit* the realm, and to *settle* on lands *out of the realm*: as also acknowledgement that they and their posterity, were entitled to enjoy all the liberties, franchises, and immunities, of free denizens and natural subjects; to all intents and purposes, as if they had been abiding and born within the realm.

So long as they were considered as natural born English subjects *of the realm*; they must retain and possess, in the full enjoyment and exercise thereof, all the same rights and liberties in their persons; all the same franchises and privileges in their property; that any other English subject did possess.—If their freehold was part of any manor in any county of the realm; and that freehold was worth forty shillings by the year; such freehold undoubtedly gave the possessor a vote for the representative of such county:

and these rights must give this subject, this freeholder ; claim to the same participation of council in the legislative part of government ; to the same communication of power in the executive part ; the same right to act and trade ; as every other English freeholder had.

If by migrating from out the realm, the colonists ceased to have participation ; (such legislative participation in the councils as the English freeholder hath ;) if they ceased to have communication in the offices, burthens, and exercise of government ; if being *without* the realm, they ceased to be bound by laws made only for the internal regulation and government of the realm ; if they ceased in future to be bound by laws wherein they were not expressly named ; if they ceased to be under the protection of those laws which were made, and those powers and magistracies which were created for the preservation of the peace within the realm ; if they were (no matter how) separated from participation of the benefits of our holy religion, according to the established church ; and if the colonies at the same time were not parts or parcels of the realm ; they undoubtedly ceased to be subjects of the realm. But being by law, (both established and natural,) possessed of all the rights, privileges, franchises,

franchises, and immunities, of a free-born people—no government less free than that which they had left, could, by any justifiable power, be established over or amongst them: and therefore when the king interposed his power, the colonists were established, in a government, conformable to the government of England. They had power of making laws and ordinances, and of laying impositions, by a general assembly, or representative legislature—the power of erecting courts, and creating magistrates; of the same power and operations; by the same modes and proceedings, *mutatis mutandis*; as were used in the government of England: nay, in some cases, by a mode adapted to a democratic, and even elective government. The administrative and executive part, had all the same checks; and the legislative all the same powers and privileges: only restrained from not acting contrary to the laws of England. And upon the same ground, those colonies, of whose first settlement the crown took no care or cognizance; (the colony of Plymouth, || that of Massachusetts, Providence Plantation, and the colony of Connecticut,) established among themselves, the like powers of free government.

|| Vide Mr. Prince's New-England Chronology; and Lt. Gov. Hutchinson's Hist. of Massachusetts.

Here we may venture to affirm, that if the colonies were to be deemed without the realm; not parts or parcels of it; not annexed to the crown of England, though the demesnes of the King; if the colonists by these means ceased to be subjects of the realm, and the Parliament had no right or jurisdiction to make laws about them; if the government of them resided in the King, only as *their* sovereign, *dum Rex ei præsit, ut caput istius populi, non ut caput alterius populi*; they were certainly a people *sui juris* — *nam imperium quod in rege est ut in capite, in populo manet ut in toto, cujus pars est caput*: * and having an undoubted claim, by the nature of their liberties, to a participation in legislature; had an undoubted right, when formed into a state of government, to have a representative legislature established, as part of their government: and therefore when so formed; being a body politic in fact and name, they had within themselves, (the King, or his deputy, being part,) full power and authority, to all intents and purposes, both legislative and executive, for the government of all the people, whether strangers or inhabitants, *within their jurisdiction*; independent of all *external direction* or government; except what might consti-

* *Grotius de B. & P. lib. 2. c. 9. § 8.*

tutionally

tutionally be exercised by their sovereign lord the King, or his deputy ; and except their subordination, (not allegiance) to the government of the realm of England (*ut alterius populi.*) They acknowledged themselves to be a government subordinate to the government of England, so that they might justly be restrained from doing or becoming any thing repugnant to the power, rights and interest of England—but held their allegiance, as due only to their sovereign : therefore, (these premises admitted) as they did on one hand truly measure the duties of this allegiance, by the same rights and claims as the King's English subjects of the realm did—so on the other, did they justly maintain, that in every exercise of their own rights, privileges and powers, they were free and independent of all controul ; except what was interwoven into their constitution, so as to operate in the internal movements of these powers ; or to be externally exercised by the legal powers, and negative, residing in the King their sovereign, or in his deputy.

They certainly were not provinces in the simple idea of Roman provinces governed by laws and power ; not deriving from their own rights, and arising within their own government ; but imposed on them by the

imperium alterius populi, and administered under provincial officers commissioned from this *imperium*; the power of which officers, although it was, when operating within the jurisdiction of the city, no more than the ordinary emanation of the principles of a free state; yet was absolute as to the people and government of the provinces, who were not in communion as parts participant of that system of power. Our colonies being each a body politic; and having a right to, and enjoying in fact, a certain legislature; indent rather with the case of the Grecian colonies, as stated by Grotius,—*Huc referenda & discessio quæ ex consensu fit in colonias, nam sic quoque novus populus sui juris nascitur, ὃ γὰρ ἐπὶ τῷ Δῷλοι, ἀλλ' ἐπὶ τῷ ὁμοιοι εἶναι ὑπερέμπονται. Non enim ut servi sint sed ut pari jure sint dimituntur* *.—Many instances may be collected from Thucydides, which would shew that the dependence of the colonies of Greece, on their mother cities, was only the connection of *Fæderates* acknowledging *precedence*; not the subordination of subjects, acknowledging allegiance. This state and constitution of colonies may suit a democracy, not extending its

* It should be remarked here, though Grotius has omitted to do it, That this is a Position of the Locreans, a Colony of Corinth, obviating the Charge of Revolt.

Thucyd. Lib. i. c. 37.

imperium so as to possess and govern external dominions; but I shall confine myself to the instances and facts of the English *provinces*, which indent more nearly with the nature of the Roman Colonies, *Civium Romanorum juris Romani, aut latio jure donatæ*.

They were bodies corporate; but certainly not corporations, in the sense of such communities *within the realm*. They were erected into provinces; had the *jura regalia*. The Patentee, as the King's deputy, or the King's governor (as part of their constitution, whether by commission or by charter) was vested with all the same royal powers which the King hath in his palace, both executive and legislative.

These provinces were all, in the true spirit, intent, and meaning of the thing, COUNTIES PALATINE: and some of them were actually and expressly created such.

The Caribbee Islands, granted by Charles the first, in the third year of his reign, to the Earl of Carlisle; were erected into a province or county, by the name of The Province of Carlisle; “ with all and every
 “ such like and so large privileges, jurisdiction,
 “ prerogatives, royalties, liberties,
 “ freedoms,

“ freedoms, regal rights and franchises what-
 “ soever, as well by sea as land, within the
 “ limits of the said islands, to have, use,
 “ exercise, and enjoy, as any Bishop (ac-
 “ cording to the custom of Duresme) with-
 “ in the said bishoprick or county palatine
 “ of Duresme, in our kingdom of Eng-
 “ land, ever before hath, had, keepeth,
 “ useth, or enjoyeth, or of right could or
 “ ought to have, keep, use, or enjoy.”

The grant in 1630, to Sir Robert Heath,
 and his heirs, of the lands now called Lou-
 isiana, ran in the same manner.——“ We
 “ erect the same into a province, and in-
 “ corporate it by the name of Carolanea,
 “ or the province Carolanea, with all and
 “ singular such like, and as ample rights,
 “ jurisdictions, privileges, prerogatives, roy-
 “ alties, liberties, immunities, and franchi-
 “ ses, as well by sea as land, within the
 “ regions, territories, islands, and limits
 “ aforesaid, to have, exercise, use, and en-
 “ joy the same, as any Bishop of Duresme,
 “ in the bishoprick or county palatine of
 “ Duresme, &c. &c.

In the charter of Maryland is granted as
 follows, “ We have thought fit to erect the
 “ same into a province, with all and singu-
 “ lar the like, and as ample rights, jurif-
 “ dictions,

“ dictions, privileges, prerogatives, royal-
 “ ties, liberties, immunities, royal rights
 “ and franchises, of what kind soever, tem-
 “ poral, as well by sea as by land, within
 “ the country, isles, islets, and limits afore-
 “ said, to have, exercise, use, and enjoy the
 “ same, as amply as any Bishop of Durham
 “ within the bishoprick or county palatine
 “ of Durham, in our kingdom of Eng-
 “ land, hath any time heretofore had, held,
 “ used, or enjoyed, or of right ought, or
 “ might have had, held, used or enjoyed.”

The charter of the 15th of Charles the
 first, to Sir Ferdinando Gorges, erects, cre-
 ates, and incorporates, all the premises grant-
 ed, into a province or county, called the
 province or county of Main; granting him
 all and singular, and as large and ample
 rights, jurisdictions, privileges, prerogatives,
 royalties, liberties, and immunities, franchi-
 ses and preheminencies, as well by sea as
 land, within the premises, as the Bishop of
 Durham hath within the county palatine of
 Durham.

The charter of Pennsylvania *erects the said*
country into a province or seignory, in the re-
 cital of the powers of which all the *regalia*
 are granted; and especially the power and
 privilege

privilege of not being taxed, but by the consent of the freemen, or in parliament.

By the charter of William and Mary, the provinces of the Massachusetts-bay was “*erected and incorporated into a real province,*” in the powers of which the Jura Regalia are described, and fully granted.

All these provinces have the power of peace and war ; of exercising law martial ; of life and death ; of creating towns, counties, and other corporations within themselves : and the powers of their general assemblies, are very different from, and go beyond the powers of our common councils within the realm.

The fact is, that the constitution of the government of England ; as it stood at that time, founded upon, or built up with the feudal system ; could not extend beyond the realm. There was nothing in the nature of the constitution, providing for such things as colonies, or provinces. Lands without or beyond the limits of the realm ; could not be the property of the realm, unless by being united to the realm : but the people who settled upon these lands in *partibus exteris*, being the King’s liege subjects ; the King, as sovereign Lord, assumed the right

right of property, and of government. Yet the people being intitled to the rights, privileges, &c. of freemen; the King established, by his commission of government, or charters, these colonies as free states; subordinate, according to such precedents or examples, as his ministry thought suitable to the present case: and the county palatine of Durham, became this precedent; and the model of this constitution as to the *regalia*. This was the actual state of the circumstances of our colonists at their first migration, and of the colonies at their first settlement: and had nothing further intervened; would have been their constitution at this day. Let us examine what has intervened; and mark as precisely as we can, where power has attempted, and where right has effected, any change in these circumstances.

Notwithstanding this mode of constitution; acknowledged *de jure*, as well as established *de facto*; we find, that from the moment that these our Kings, and their council, took up the idea of comparing these plantations to the duchies of Gascoigne or Normandy, (as we find in the journals of the House of Commons, before referred to, they did) from that moment, the constitution of the colonies was treated as being the
same

same with that of Jersey, part of the duchy of Normandy : and the same mode of administration was adopted for the colonies, as had been used and accustomed for the government of that island.

Appeals from the provincial law courts were established—not to the courts of equity here in England ; not to the House of Lords, according to the constitution and custom of England ; but as appeals from the courts in Normandy were brought before the King, as Duke in council—so here in the plantations, appeals were made to the King in council, according to the ancient custom of Normandy : and the same rules for these appeals were adopted—“ Appeals (says Mr. Falle in his account of Jersey) “ may be brought before the council board, “ in matters of civil property, * above the “ value of 300 livres Tournois, but no appeal is admitted in matters of less value : “ nor in interlocutories, nor in criminal “ causes ; which are judged here to be “ without appeal.”

As the laws of Jersey may be reduced under these three heads : 1. The ancient custom of Normandy, as it stood before the

* In the same manner appeals may be brought from the colonies, in matters where the value is £. 300.

alienation of that duchy, called in the rolls of the itinerant judges *La Somme de Mançel*. This makes what the statute law is in England. 2. Municipal or local usages, which are the unwritten and traditionary law, like the common law in England. 3. Constitutions and ordinances made by the King, or his commissioners royal; with such regulations and orders, as are from time to time transmitted to Jersey, from the council board.—So Charles the First took up the idea, that the colonies in like manner, (his demesnes in his foreign dominions) might be governed by laws, ordinances, and constitutions, made and published with his consent, * by his royal commissioners, established for governing the plantations; together with such further instructions as should be transmitted from the council board: and that these commissioners, being his council for plantation affairs, might be the dernier court of appeal from the colonies. He left indeed the colonies in some degree in possession of the statute law of England, as it stood before their migration; and allowed them (as far as was consistent with the legislation of this his council) the making and using their municipal and local laws.

Under these Norman ideas of the consti-

* Vide Appendix, for the Commission at length.

tution

tution of our colonies ; it was a most fortunate circumstance for them, That the island of Jersey had, by its constitution, a right to hold a “ convention or meeting of the three “ orders or estates of the islands ; in imitation of those august assemblies, known by “ that or some other name, in great kingdoms and monarchies : a shadow, and “ resemblance, of an English parliament”— In which, “ the King’s governor, or lieutenant, had a negative voice : The great “ business of which meetings, was the raising money to supply public occasions. “ For, (Mr. Falle says,) as in England “ money cannot be raised upon the subject, “ but by authority of parliament ; so here “ it is a received maxim, that no levies can “ be made upon the inhabitants, but by “ their own consent, declared by their representatives assembled in common-council.” It was fortunate, I say, for our colonies, that this was the case of Jersey : for there can be no other reasonable account given under these Norman principles, how our colonies preserved this essential right of Englishmen, but that it happened to be also a constitutional right of his Majesty’s foreign French-Norman subjects. The commission which the King had thus issued and granted, was afterwards annulled, and a board of plantations (at the head of which,
as

as a marine department, the Earl of Warwick was placed, being admiral) was appointed by an ordinance of parliament, when parliament assumed the sovereign executive power. After the restoration, a council of trade and plantations was established: and upon that being dissolved, in December 1674; these matters were conducted by a committee of council, until after the revolution; when the present board of trade and plantations was appointed. Although, as political liberty became better understood, and more effectually established in our own constitution, the very idea of a privy council making laws for English subjects, (though in America,) began to be more warily touched upon, and was at last finally dropped; yet the idea of directing, restraining, and suspending in some cases, the exercise of their constitutional powers of government, by the King's further powers and instructions, and authorities under his signet, or sign manual, or by his order in privy council, or even by letters from secretaries of state, doth continue too deeply rooted to this day: this fragment also of the Norman custom, The appeal to the King, as Duke in council, continues to be the corner-stone in the edifice of their judicatories. From the state of matters as above, it is clear, that so far as refers to the relation be-

tween the King and the colonies, while the King by himself, or by his royal commissioners, his council, or his committee, assumed a right to make and publish laws, constitutions, and ordinances, as binding upon, and penal against, the people of the colonies, without the intervention of their legislature, they undoubtedly had a right, and it was their duty, to reject them, and to refuse obedience to them : as also to consider all his royal commands and instructions ; (whether by orders in council, by sign manual, or by letters from secretaries of state, when they assumed the port of laws or ordinances ;) to be no otherwise binding on the colonies and provinces, than as royal proclamations ; which have in many cases, a certain authority, *quoad terrorem*, though not that of law. If the colonists had at their migration, such natural liberties as above described ; and were, by the commissions of government or charters (for I see no difference ; both, equally providing, for an uninterrupted and continual succession of civil government) established in the same ; no orders or instructions, which might derive thus from the King alone, (to the suspending, restraining, or obstructing the enjoyment of these rights and liberties, or the exercise of these powers) could take effect, or have the force of law.

As

As thus the King's power in the government of the colonies could not ; so, *à fortiori*, that of the parliament without the King, (as by that committee, or board of plantations, instituted by order of parliament in the year 1643) could not on any pretence whatsoever supersede the rights and liberties of the colonies, or of the colonists.

How far the power of King and parliament ; *the whole imperium of Great Britain* ; may go in conjunction with right ; is matter of more difficulty to ascertain, and of more danger to decide. If the provinces have any rights, however much subordinate, *even this imperium must be bounded by them*. However, I have formed my opinion on this subject, and I will speak it out—if I am in an error ; even error may give occasion to the rise of truth.—But I must first consider those points of colony administration, which respect the relation in which the colonies stand connected, as subject to the King, and the immediate exertions of his power.

C H A P. IV.

*The several points of administration considered,
as the Colonies stand related to the crown.*

HAVING said so much on the liberties of the people in the colonies ; it is right, perhaps necessary, to say ; I am sure it may be said with the utmost precision and conviction, That the King must retain in himself, and in his deputy set over them, in his government of them, all those same preheminences, royal rights, powers and prerogatives, which are vested in the crown, as part of the government of England : and that whenever the people, or their representatives in the colonies, act towards his royal person, or towards his representative, in derogation of these rights and powers ; they can neither be justified by right, or the constitution, or even in good policy towards themselves, whatever specious temporary reasons they may assign for it. This mode of conduct, will be permitted to a certain degree only, and for a certain time : * but will always in the end, as it always hath in fact done, call forth some remedy, (so far as relates to

* This has been verified, since the writing of the above, by the appointments of salaries to the crown officers in the colonies, paid by the crown.

the colonists ideas,) worse than the disease. I will instance in one case only—The constant refusal of the Assemblies, to fix permanent salaries, for the civil establishment of government.

We will therefore next review those several points, wherein the crown, or its Governors, acting under its commission and instructions, have been engaged in almost constant disputes with the people of the colonies.

Two great points which the Colonists labour to establish; are, first, the exercise of their several rights and privileges, as founded in the rights of an Englishman; and secondly, as what they suppose to be a necessary measure in a subordinate government, the keeping in their own hands, the command of the revenue, and the pay of the officers of government; as a security for the conduct of those officers towards them.

SECTION I.

Of the force which the instructions that the King superadds to, and which the restriction by which he derogates from, the powers of the charter or commission of Government, ought to have with the people of the colonies, and their legislatures.

UNDER the first head, come all the disputes about the King's instructions; and the governor's power, as founded on them.

The King's commission to his governor, which grants the power of government, and directs the calling of a legislature, and the establishing of courts; at the same time that it fixes the governor's power, according to the several powers and directions granted and appointed by the commission and instructions; adds, "and by such further powers, instructions, and authorities, as shall, at any time hereafter, be granted or appointed you, under our signet or sign manual, or by our order in our privy council." It should here seem, that the same power which framed the commission, with this clause in it; could also issue its future orders and instructions in consequence thereof: but the people of the colonies say, that the inhabitants of the colonies, are entitled

titled to all the privileges of Englishmen :
 that they have a right to participation in
 that *will* of the community, which is to
 govern them, and which is to give and grant
 for them such aids and subsidies as the pub-
 lic wants demand. That no commands of
 the crown, by orders in council, instruc-
 tions, or letters from Secretaries of State,
 are binding upon them ; further than they
 please to acquiesce under such, and conform
their own actions thereto : that they hold
 this right of legislature, not derived from
 the grace and will of the crown, and de-
 pending on the commission which continues
 at the will of the crown ; but that this
 right is inherent and essential to the com-
 munity, as a community of Englishmen :
 and that therefore they must have all the
 rights, privileges, and full and free exercise
 of their own will and liberty in making
 laws, which are necessary to that act of le-
 gislation,—uncontrouled by any power of
 the crown, or of the governor, preventing
 or suspending that act in the doing : and,
 that the clause in the commission, directing
 the governor to call together a legislature
 by his writs, is declarative and not creative :
 and therefore he is directed to act, conform-
 ably to a right actually already existing in
 the people, &c. : and therefore that such
 clause ought not to be in the commission ;

or to be understood, as being of no effect, so far as concerns the colonists.

When I speak of full uncontrouled independent powers of debate and result, so far as relates to the framing bills and passing them into laws, uncontrouled by any power of the crown or of the governor, as an essential property of a free legislature; I find some persons in the colonies imagine, that I represent the colonies as claiming a power of legislature, independent of the King's or governor's negative.—These gentlemen knowing that it is not my intention to do injustice to the colonies; wish me so to explain this matter, that it may not bear even the interpretation of such a charge—I do therefore here desire, that the reader will give his attention to distinguish a full, free, uncontrouled, independent power, in the act of legislation; from a full, free, uncontrouled, independent power, of carrying the results of that legislation into effect, independent either of the Governor's or King's negative. The first right, is that which I represent the colonists claiming, as a right essential to the very existence of the legislature: The second is what is also essential to the nature of a subordinate legislature, and what the colonists * never call in question, That therefore the point here meant to be

stated as in debate, is ; Whether a subordinate legislature can be instructed, restricted, and controuled, *in the very act* of legislation ? whether the King's instructions, or letters from secretaries of state, and such like significations of his Majesty's will and pleasure ; is a due and constitutional application of the governors, or of the royal negative ? *—Or whether in fact or deed, the people of the colonies, (having every right to the full powers of government, and *to a whole legislative power,*) are not under this claim entitled, in the powers of legislature, and the administration of government, to use and exercise in conformity to the laws, and in subordination to the sovereignty of Great Britain, the same, full, free, independent, unrestrained power and legislative will, *in their several corporations* under the King's commission and their respective charters, as the government and legislature of Great Britain, holds by its constitution, and under the great charter,

Every subject, born within the realm, (under the freedom of the Government of

* The colonists constantly deny this—and ministry, (otherwise such instructions would not be given,) constantly maintain it. After experience of the confusion and obstruction which this dubitable point hath occasioned to business, it is time surely that it were some way or other determined,

Great

Great Britain, or by adoption admitted to the same,) has an essential indefeasible right to be governed, under such a mode of government as has the unrestrained exercise of all those powers which form the freedom and rights of the constitution: and therefore “the crown cannot establish any colony upon, or contract it within, *a narrower scale*, than the subject is entitled to, by “the great charter of England*.” The government of each colony, must have the same powers, and the same extent of powers, that the government of Great Britain hath—and must have, (while it does not act contrary to the laws of Great Britain,) the same freedom and independence of legislature, as the parliament of Great Britain has. This right (say they) is founded, not only in the general principles of the rights of a British subject; but is actually declared, confirmed, or granted to them in the commissions and charters which gave the particular frame of their respective constitutions. If therefore, in the first original establishment, like the original contract, they could not be established, upon any scale short of the full and compleat scale of the powers of the British government—nor the legislature be established on any thing less than

* Historical Review of the Constitution and Government of Pennsylvania, p. 11.

the whole legislative power—much less can this power of government and legislature, thus established, be governed, directed, restrained or restricted, by any posterior instructions or commands, by the letters of Secretaries of State. But upon the supposition, that a kind of general indetermined power in the crown, to superadd instructions to the commissions and charter be admitted; where the colonists do not make a question of the case wherein it is exerted; yet there are particular cases wherein both directive and restrictive instructions are given, and avowedly not admitted by the colonists. It is a standing instruction; as a security of the dependence of the government of the colonies on the mother country; that no acts wherein the King's rights, or the rights of the mother country, or of private persons, can be affected; shall be enacted into a law; without a clause, suspending the effect thereof, till his Majesty's pleasure shall be known. This suspending clause is universally * rejected on the principles above: because such suspension, disfranchises the inherent full power of legislature, which they claim by their rights to the British liberties, and by the special declarations of

* In some cases of emergency, and in the cases of the concerns of individuals, the instruction has been submitted to, but the principle never.

such

such in their charters. It does not remove this difficulty, by saying, that the crown has already in its hands the power of fixing this point, by the effect of its negative given to its governor. It is said, that this instruction is not meant as a restriction upon, but is an indulgence to the legislatures; and that if the crown should withdraw this instruction; and peremptorily restrain its governor from enacting laws, under such circumstances as the wisdom of government cannot admit of; that then these points are actually fixed by the true constitutional power: but that if the colonies had not this conditional indulgence, they would be in a worse case, than the case complained of. Wherever it is so said, I must repeat my idea, that this does not remove the difficulty.—Let us first wave the doubt which the colonists might raise, (especially in the charter colonies,) how far the governor ought, or ought not, to be restricted from giving his assent, in cases contrary only to instructions, and not to the laws of Great Britain; and on this ground let us consider the effects of this measure. In cases where the bills, offered by the two branches, are for providing laws, absolutely necessary to the continuance, support, and exercise of government; and where yet the orders of the crown, and the sense of the people, are so widely different

as to the mode, that no agreement can ever be come to in these points—Is the government, and administration of the government of the colonies, to be suspended? Is the interest, perhaps the being of the plantations, to be hazarded by this obstinate variance? and can that exercise of the crown's negative, in such emergencies, and with such effect, ever be taken up as a measure of administration? And when every thing is thrown into confusion, and abandoned even to ruin by such measure; will administration justify itself by saying, that it is the fault of the Colonists? On the contrary, this very state of the case, shows the necessity of some other remedy.

In the course of examining these matters, will arise to consideration, the following very material point.—As a principal tie of the subordination of the legislatures of the colonies on the government of the mother country; they are * bound by their constitutions and charters, to send all *their acts* of legislature to England, to be confirmed or abrogated by the crown: but if any of the legislatures should be found to do almost every act of legislature, by votes or orders; even to the repealing the effects of acts;

* This hath been made a matter of doubt in some of the charter colonies.

suspending

suspending establishments of pay; paying services; doing chancery and other judicatory business: if matters of this sort, done by these votes and orders, never reduced into the form of an act, have their effect, without ever being sent home as acts of legislature, or submitted to the allowance or disallowance of the crown; if it should be found that many, or any of the legislatures of the colonies, carry the powers of legislature into execution, independent of the crown by this device,—it will be a point to be determined how far, in such cases, the subordination of the legislatures of the colonies, to the government of the mother country, is maintained or suspended—or if, from emergencies arising in these governments, this device is to be admitted; the point, how far such is to be admitted, ought to be determined: and the validity of these votes and orders, these Senatus-Consulta, so far declared—For a point of such great importance, in the subordination of the colony legislatures; and of so questionable a cast, in the valid exercise of this legislative power; ought no longer to remain in question.

SECTION

SECTION II.

Of the manner of providing for the support of the King's government in the Colonies.

THE next general point yet undetermined; the determination of which, very essentially imports the subordination and dependance of the colony governments, on the power of the king; is, the manner of providing for the support of government, and for all the executive officers of the crown. The freedom and right efficiency of the constitution require, that the executive and judicial officers of government, should be independent of the legislative; and more especially so in popular governments, where the legislature itself is so much influenced by the humours and passions of the people: for if they are not; there will be neither justice nor equity in any of the courts of law; nor any efficient execution of the laws and orders of government in the magistracy: according, therefore, to the constitution of Great Britain, the crown has the appointment and payment of the several executive and judicial officers; and the legislature settles a permanent and fixed appointment, for the support of government, and the civil list in general: The crown therefore has, *à fortiori*, a right to require
of

of the colonies, (to whom, by its commission or charter, it gives the power of government;) such permanent support; appropriated to the *offices*, not the *officers* of government; that they may not depend upon the temporary and arbitrary will, of the legislature.

The crown does, by its instructions to its governors; order them to require of the legislature a permanent support. This order of the crown, is generally, if not universally rejected, by the legislatures of the colonies. The assemblies quote the precedents of the British constitution; and found all the rights and privileges which they claim, on the principles thereof. They allow the truth and fitness of this principle in the British constitution; where the executive power of the crown is immediately administered by the King's Majesty: yet say, under the circumstances in which they find themselves; that there is no other measure left to them, to prevent the misapplications of public money, than by an *annual* voting and appropriation of the salaries of the governor and other civil officers, issuing from monies lodged in the hands of a provincial treasurer, appointed by the assemblies: For in these subordinate governments, remote from his Majesty's immediate influence, administered oftentimes by necessitous and rapacious governors,

vernors, who have no natural, altho' they have a political connection with the country, experience has shewn that such governors have misapplied the monies raised for the support of government, so that the civil officers have been left unpaid, even after having been provided for by the assembly. The point then of this very important question comes to this issue; Whether the inconveniencies arising from, and experienced by some instances of misapplications of appropriations; (for which however there are in the King's courts of law, due and sufficient remedies against the offender;) are a sufficient reason and ground for establishing a measure so directly contrary to the British constitution: and whether the inconveniencies to be traced in the history of the colonies, through the votes and journals of their legislatures; in which the support of governors, judges, and officers of the crown, will be found to have been withheld or reduced, on occasions, where the assemblies have supposed that they have had reason to disapprove the nomination,—or the person, or his conduct—whether, I say, these inconveniencies have not been more detrimental, and injurious to the government of the colonies themselves, than any temporary inconveniencies which might arise within the period for which such establishment is fixed;

ed ; and whether, instead of these colonies being dependent on, and governed under, the officers of the crown ; the scepter is not reversed ; and the officers of the crown dependant on, and governed by the assemblies. The Colonists themselves allow that this measure * “ renders the governor, and all “ the other servants of the crown, dependant on the assembly.”—But the operation of this measure does not end here : it extends to the assuming, by the assemblies, the actual executive part of the government in the case of the revenue : than which, nothing is more clearly and unquestionably settled in the crown. In the colonies the treasurer is solely and entirely a servant of the assembly or general court : and although the monies granted and appropriated, be, or ought to be, granted to the crown on such appropriations ; the treasurer is neither named by the crown, nor its governor ; nor gives security to the crown or to the Lord High Treasurer ; (which seems the most proper ;) nor in many of the colonies, is to obey the governor’s warrant in the issue ; nor accounts in the auditor’s office ; nor in any one colony, is it admitted, that he is liable to such account. In consequence of this supposed necessity, for the assembly’s

* Smith’s History of New York, p. 118.

taking upon them the administration of the treasury and revenue; the governor and servants of the crown, in the ordinary revenue of government, are not only held dependant on the assembly; but all services, where special appropriations are made for the extraordinaries which such services require, are actually executed and done by commissioners appointed by the assembly; to whose disposition, such appropriations are made liable. It would be perhaps invidious, and might tend to pre-judging on points, which ought very seriously and dispassionately to be examined; if I were here to point out, in the several instances of the actual execution of this assumed power, how almost every executive power of the crown, lodged in its governor, is, (where money is necessary,) thus exercised by the assembly, and its commissioners—I therefore rest the matter here.

In the first edition of this book I pointed out the measure of the government's settling fixed salaries on the officers of the crown in America, independant of the people. I afterwards withdrew this proposition; from an apprehension of the evils which might arise to the service, by these fixed and permanent salaries having a tendency to render

der the chief offices sinecures. This measure, hath been since established by parliament. But why, those who had the conduct of it, would not admit a clause, providing that such salaries hereafter to be establish'd, should be given to no person but to such as actually executed the office, is not very easy to conceive; unless from suggestions that one would not willingly take up, against the integrity of their intentions.—If that act should ever be explained, or amended by any subsequent law, it is to be hoped that this clause or proviso, will not again be omitted.

The same motive, and reason which weigh'd with government, to adopt this measure of fixing salaries for the civil officers of the crown in America during the time of their serving; should operate, to induce government to take one step further, in order to render the measure quite effectual; that is, to settle some half-pay or other pension, on such officers as are from age or ill health removed; or after long services in that country, are permitted to return home. The appointments of the governors, &c. are such, wherein no fortunes can either be made, or saved with honour.—If they have no fortunes of their own,

own, they must, after their services, return home to starve. “There is no man” (says an American; the intelligent author of the *Historical Review of Pennsylvania*) “long, “or much conversant in this overgrown “city [London] who hath not often found “himself in company with the shades of “departed governors, doomed to wander “out the residue of their lives, full of the “agonizing remembrance of their past “eminence, and the severe sensation of “present neglect. *Sir William Keith*, upon “his return, was added to this unfortunate “list; concerning whom, the least that “can be said is, that either none but men “of fortune should be appointed to serve “in such distinguish’d offices; or other- “wise for the honour of government itself, “such as are recalled without any notorious “imputation on their conduct, should be “preserved from that wretchedness and “contempt, which they have been but too “frequently permitted to fall into, for “want even of a proper subsistence.”— The means of avoiding this wretched issue of their service, by making up a fortune to live on, when they shall be recalled, is a temptation which ought to be removed from this situation, by those who regard the King’s *service*, even if they have no feelings of compassion for his *servants*.—A small

pittance would pay this ; and that very sum might engage the services of these half-pay officers, in a way not unuseful to government.—They might, in consideration of this pay, be directed to attend the Board of trade (or whatever board or officer was, for the time being, the acting minister for the business of America,) in order to give explanations, or opinions, as they should be required : or even to report ; if ever they should be thought worthy to have any matter, requiring a report, refer'd to them : and they might be formed into a kind of subordinate board for this purpose.—The benefit of such a measure needs not to be expatiated upon ; and to explain the operation of it, would be too minute a detail for the cursory mention which I here make of it.

S E C T I O N III.

Of the King's delegation of the military power, both consular and dictatorial.

IT is a duty of perfect obligation from government towards the colonies, to preserve the liberty of the subject ; the liberty of the constitution : It is a duty also of prudence in government, towards itself ; as such conduct is the only permanent and sure ground, whereon to maintain the dependence

pendance of those countries, without destroying their utility as colonies.

The constitutions of these communities, founded in wise policy, and on the laws of the British constitution, are established by their several charters; or by the King's commission to his governors, being in the nature of a charter of government. In these, all the just powers of government are described and defined; the rights of the subject and of the constitution declared; and the modes of government agreeable thereto established. As these pass under the great seal; no jurisdictions or offices will be inserted in the powers granted, but what are agreeable and conformable to law, and the constitution of the realm. Although the King's commission is barely a commission during pleasure, to the person therein named as governor; yet it provides for a succession without vacancy, or interregnum; and is not revoked but by a like commission, with like powers: It becomes the known, established constitution of that province which hath been established on it; and whose laws, courts, and whole frame of legislature and judicature, are founded on it: It is the charter of that province: It is the indefeasible and unalterable right of those people: It is the indefeasible right by which those

colonies, thus established, are the colonies of Great Britain; and therefore not to be altered, but by the same means as any reform or new establishment would take place in Great Britain: It cannot, in its essential parts, be altered or abated by any royal instructions or proclamation; or by letters from secretaries of state: It cannot be superseded, or in part annulled, by the issuing out of any other commissions, not known to this constitution.

In these charters, and in these commissions, the crown delegates to the governor for the time being, all its constitutional power and authority, civil and military—the power of legislation, so far as the crown has such—its judicial and executive powers; its powers of chancery; admiralty jurisdiction; and that of supreme ordinary.—All those powers, as they exist and reside in the crown, are known by the laws and courts of the realm: and as they are derived to the governors, are defined, declared, and *patent*, by the charters and commissions *patent*. It is therefore the duty and true interests of the Colonists, to maintain these rights; these privileges; this constitution: It is moreover the duty and true interest of King, Lords, and Commons, to be watchful over, to support and defend, these rights
of

of the colonies: It is the duty of administration, to have constant regard to the exercise of them; otherwise “ it will be found “ a dangerous thing to have given so much “ of civil power out of the King’s hands; “ and to have done so little to maintain “ those into whose hands it is entrusted.” How far the establishment of the office and power of a military commander in chief, not subordinate but superior to these constitutional commanders in chief—how far the superseding of the *Consular* power of the Governors, by establishing, not for the time of war only, but as a settled system, this *Dictatorial* power; with a jurisdiction extending over the whole of the British empire in America—is conformable to law, to prudence, or sound policy—is matter of very serious consideration, to those who regard the liberties of the constitution.

All military power whatsoever, as far as law and the constitution will justify the establishment of such, is resident in the established office of governor, as Captain general and commander in chief. There is no power here granted, but what is specified and defined by the nature of the constitution. The subject and state is duly guarded against any extensions of it, by the several laws which the legislatures of the several colonies

colonies have provided to limit that power : and it can be exercised by none but such persons as are within the jurisdiction of the province ; who deriving their powers from the supreme powers, are amenable to the laws of the province ; and to the governor, who is himself specially responsible for the trust. This power thus limited becomes part of the constitution of the province ; and unless thus limited, and thus considered as part of the constitution of the government ; it may be matter of great doubt, whether the crown would be advised to erect any military powers whatever. But under such limitations, and as a known established part of the constitution ; the crown may safely grant these powers, and the people safely live under them : because the governor is “ required and commanded to do and “ execute all things in due manner, that “ shall belong unto *the trust* reposed in him, “ according to the several powers and authorities mentioned in the charter.”— That is to say, according to those powers, which in charter governments are expressly part of the constitution : and which from the very nature of the *commission patent*, in such constitutions as are called King’s governments, are likewise to be considered in the same light.—When this military branch of the governor’s office, is established and
received

received as part of the constitution ; the King may safely grant, and the people safely act under, “ a power to levy, arm, muster, “ command, and employ all persons whatsoever residing within such province ; to “ resist and repel, both at land and sea, all “ enemies, pirates, and rebels ; and such “ to pursue in or out of the limits of the “ province : to erect and build forts ; to “ fortify and furnish, and to commit the “ command of the same to such person or “ persons as to such governor shall seem “ meet—and the same again to dismantle or “ demolish : and to do and execute all and “ every other thing which to a captain general doth or ought of right to belong, as “ fully and amply as any other the King’s “ captains general doth or hath usually “ done, according to the powers in the “ commission and charter granted.” It becomes hence a question of the highest import, and leading to the most dangerous consequences—Whether, after the constitutions and offices of a colony or province are thus established ; the King himself can dismember the same, so as to grant to any office or officer not known to the constitution, any part whatsoever of those powers ; as he cannot disfranchise a people, having such powers, under such charters, of any the least right or privilege included in, or as derived

derived from, the establishment of their constitution of government? This is a question that it would behove the crown lawyers well to consider; whenever it shall be referred to their consideration. If every military power that can legally be included in any commission which the crown will be advised to issue, is already included in the office of governor, as part of the constitution of these provinces and colonies; what commission can supersede the same, or give power to any other officer than the governor, to exercise these powers within such province? It was suggested by the writer of these papers at the beginning of the late war; that *if the necessity of the case in time of war* urged to the appointing a military commander in chief of all North America, who should command all military operations, and preside in general over all military establishments for the general service, independent of, and superior to, the powers and authorities already granted to the governors and captains general of the provinces,—it was suggested; that no commissions under the private seal and sign manual, could supersede, revoke, or take precedence, of these powers granted by letters patent under the great seal; and it was determined accordingly, that the military commander in chief must have his commission patent under the great

great seal. But when it came to be considered, what powers should be granted in this commission; the wisdom and prudence of the * great statesman and lawyer who was then entrusted with that seal, issued the commission for the commander in chief, in general and indefinite terms; “to have, “hold, exercise, and enjoy the said office “during pleasure, together with all the “powers, authorities, rights and privileges, “thereunto belonging, subject however to “such restrictions, limitations, and instructions, as are given, or to be given, from “time to time, under the royal sign manual, and charging and requiring all the “governors, lieutenant governors, deputy “governors, and presidents of the council “of the respective colonies and provinces “of North America, and all other officers “civil or military within the same, to be “aiding and assisting in this command.”

These general powers, undefined and unknown, and such as no minister who advises the issuing such commission will venture to describe; these general words, power and command; either mean nothing, or suppose every thing, when a justifiable occasion, or perhaps a colourable pretext, calls for the exercise of them. It was seen that these general descriptions were either dangerous

* Lord Hardwick.

or nugatory ; and therefore the commander in chief had at the same time, another commission under the private seal and sign manual, in which were inserted all the powers for governing the forces, &c. which were not thought proper, to be included and granted by letters patent under the great seal. I am no lawyer, and do not therefore presume to give an opinion of decision ; but venture to affirm, that it ought well to be considered, Whether if this commission be *now in time of peace* interpreted to extend to any one purpose at all, it must not extend to much *more than can be justified* by either law or the constitution ? Whether (the constitutions of the provinces and colonies remaining) the office of a commander in chief, exercising such powers as are supposed necessary *to the execution of that command*, can be established over all North America ? These military powers, as they exist in the governor's commission ; exist and must be exercised under the civil limitations and regulations of the constitution : nor can any law martial, or any other military ordonnances be published, without the concurrence of the other branches of the legislature.—But the difference of this *dictatorial power*, of a military commander in chief, and the *consular* power of the provincial governor, cannot be better described, than

than in the following passage: *Ea potestas (scilicet dictatoria) per senatum more Romano magistratui maxima permittitur, exercitum parare, bellum gerere, coercere omnibus modis socios atque cives: domi militiæque imperium atque iudicium summum habere: aliter sine populi jussu nullius earum rerum consuli jus est* *.

If it should upon consideration and advice, (of which I am no judge,) be found that the dictatorial power and command of a military commander in chief, superior to the provincial governors, (however necessity, in time of war, might justify it, *ne quid respublica detrimenti capiat*,) is not agreeable and conformable to law, and to the constitution either of Great Britain or of the colonies in time of peace; it may be supposed that such will not be continued in time of peace; and that as soon as the † hostile state of Indian affairs ceases, this power will be made to cease also.

In the considerations above, I have suggested the doubt; whether this commission

* Sallust, *Bellum Catilinarium*.

† The first edition of this book was published during the continuance of the hostilities of the Indians, after the General Peace amongst the Europeans. That hath ceased. But the military establishment remains.

may be right, as to law and the constitution—But if there be only a doubt of its legality ; and there no longer remains an absolute necessity for the continuance of it ; I think it may be fairly made to appear, that neither prudence, nor sound policy, can justify it.

Such powers, with such a command, may on one hand, be dangerous to the liberty of the subject ; to the liberties of the constitution of the colonies ; and even to the state on the other hand. For there are no people in the whole world, (when their liberties shall become infected and undermined,) so liable to become the instruments of dominion ; as a people who have lived under a free and popular government. This has been the fate of the free states of Greece and Italy : this the fate of Rome itself :—But may heaven avert, that this ever becomes the state of the British colonies !

There is not, there cannot be, any danger in this power at present, but thus planted, when it comes to grow, when it has taken root, and has spread its branches through the land, it will soon overtop and overshadow, all the weaker, humbler shoots, of civil liberty. Set once this lord of the forest, on a permanent footing ;

ing; it will soon have, as Mr. Harrington says, “ Toes that have roots, and arms that “ will bring forth what fruit you please.”

It is a common observation; but it is as trivial as common; which supposes the danger of the colonies revolting, and becoming independent of the mother country. No one colony can by itself become so—and no two, * *under the present state of their constitutions*, have any possible communion of power or interest, that can unite them in such a measure: they have not the means of forming such: they have neither legislative nor executive powers, that are extended to more than one: the laws of one, extend not to the other: they have no common magistracy, no common command: in short, no one principle of association amongst them: On the contrary, the different manner in which they are settled; the different modes under which they live; the different forms of charters, grants, and frame of government which they possess; the various principles of repulsion that these create; the different interests which they actuate; the religious interests by which they are actuated; the rivalry and jealousies which arise from hence, and the impracticability, if not impossibility, of reconciling and accommo-

* Written in 1764. They have since found a principle of Association by Deputies met in Congress.

dating these incompatible ideas and claims ; will keep the several provinces and colonies, perpetually independent of, and unconnected with each other ; and dependent on the mother country. This military commission going over the whole, has in this light danger in it, which is that of furnishing them with a *principle of union*, disunited from the civil constitution. If ever the colonies revolt, and set up an empire in America ; here begins the history of it : from this period, as from the first dynasty, will future historians deduce their narrative.

When the government of Rome took up the false policy of establishing and continuing, in time of peace, military commanders in chief in their provinces ; the people of the provinces became an army ; and that army subverted the empire. “ By how much the more remote (says Machiavel) their wars were ; by so much they thought those prerogations more convenient ; by which it happened, that the commander might gain such an interest in the army, as might make it disclaim the power of the senate.” Publius Philo was the first to whom his military commission was prolonged : and this precedent once settled ; we hear next of the soldiers in Spain, declaring L. Marcius imperator in the field. *Res mali exempli imperatores legi ab exercitibus et solenne auspicatorum comitiorum in castra et provincias, pro-*

cul ab legibus magistratibusque, ad militarem temeritatem transferri†. “ This it was that
 “ enabled Marius and Sylla to debauch the
 “ army; this it was that enabled Cæsar to
 “ conquer his native country. It may be
 “ objected, that their great affairs could not
 “ have been managed at so great a distance,
 “ without such commands. — It is possible
 “ indeed, that their empire might have been
 “ longer before it came to that height, but
 “ then it would have been more lasting; for
 “ the adversary would never have been able
 “ to have *erected a monarchy* and destroyed
 “ their liberty so soon.” — This power, monarchical from its very nature, may have been dangerous to a commonwealth; and have ruined the republic, by establishing a monarchy upon it: but it will be asked, How can this ever be the case in a regulated monarchy? Can it be supposed that any future King, can ever wish to change that constitution in which his power is established? Can it be supposed that a free people could ever be so wild as to put themselves under an *unbounded military* power, in order to become independent of a *limited and civil* power? What may be the turn of future events, Heaven only knows: yet experience has taught us, that former Kings have thus mistaken their real interest; and former people have been driven to this distraction: And if, on any such future occa-

† Livius Lib. 26. § 2.

sion, there should be found established, by repeated and continued custom; *by unresisted precedents*; the office of commander in chief of all North America; not only in the possession, but in the actual exercise of these powers:—*Exercitum parare—bellum gerere—coercere omnibus modis socios atque cives*—He might like another Monck, in such critical situation, give the turn to the balance; and negotiate, (either with the prince, or the people, as his inclinations and interests lead him) for the liberties of Great Britain.—If in any future period of events, the fate of war should reduce Great Britain to struggle for its rights, its power, perhaps, its safety; on terms hardly equal, with all its force, to its support in Europe; and in the course of that struggle, there be established in North America a commander in chief, with an army at his command; with a degree of authority presiding over the civil power, and civil governors; with an extent of command capable of associating and uniting a number of powers, otherwise, incapable of such union — if such a man, at such a crisis, should have ambition enough to wish, and spirit enough to dare to set up an independent empire in America; he could want, in such crisis, no support that a wise and artful enemy to Great Britain would not give him: *Nunc illud esse tempus occupandi res dum turbata omnia novâ atque inconditâ libertate essent, dum regis stipendiis pastus obversaretur*
miles,

*miles, dum ab Annibale missi duces assueti militibus juvare possent incepta**. The enemy could not wish better ground, than such an establishment, so circumstanced, at such a crisis; nor could take a more effectual measure for the ruin of Great Britain, than setting up and supporting an American empire; for there could be no doubt of the success of the measure, and no doubt of its effect.

The present government found, already established, from the necessity of things in the state of the last war, such a power—and as the effects of that war in America, can not be said wholly to cease, † while the Indian affairs wear such an hostile appearance; this power is for the present continued: But we may confide in the true genuine principles of liberty, which animate the royal breast; we may trust in the wisdom and prudence of the King's ministry, — that no such officer as that of a military commander in chief, presiding over all North America, and preceding in military matters, and in the power *necessary to the execution of that command*, the constitutional power of governor—we may trust, ‡ I venture to say, that no such office will ever be made an establish-

* Liv. lib. 24. § 24.

† This is not the case now, 1768.

‡ I could venture to say so much when this was first written, and had grounds for what I said, in the year 1764.

ment, *in time of peace*. Regular troops are in the same manner and degree necessary in North America, as in Britain or Ireland—but we shall see them established there, under the same relations to the civil power as in Ireland; we shall see again the civil governments; as established under commissions patent, and charters; predominate. If I, a private person, and wholly removed from all advice or consultation with ministry, might be permitted to indulge a conjecture; I would suppose, from some leading measures which are already taken, of dividing the American army into commanderies, and putting a stop to draughts on general contingencies; that the danger and expence of the office of commander in chief, will soon cease: and that the several commandants of the troops appointed, each to their respective districts, having every power necessary for the discipline and government of the regular forces under their command; will be established in the same relation and subordination to the civil power of that government, within which their command lies; as the commander in chief in Ireland, stands to the supreme civil power of Ireland:—and that as a commander in chief of those forces, may in case of the commencement of hostilities, or of actual open war, be again necessary—if such necessity appears first here in Europe; his Majesty
will

will immediately appoint such: and that if such necessity should appear first in America, there will be proper provision and regulations made, for the giving effect to such necessary powers; *without leaving it to the judgment or will of the army, to say when that is necessary, or what powers in such case, are necessary.* — The several governors of the colonies should have instructions, in case of such emergency, to meet; and in council to give effect to this command; with such powers as they shall judge necessary and safe to a General commanding in chief, until his Majesty's pleasure can be known; that is to say, power of engaging in general expences; of ordering embargoes; of demanding vessels and carriages; of calling upon the several governments for their aid in troops, &c.; of preparing an army; of taking possession of all posts, forts, and castles; (which, in the ordinary course of the King's charters and commissions patent to his governors, must otherwise be under their commands; — and cannot be taken from them, unless the charters of the government can be superseded) and of having the command and disposal of all military stores: — none of which powers ought to reside in any one office, whose jurisdiction extends over all North America, and precedes the civil power of governor — unless in such case of necessity — unless confirmed (until his Majesty's pleasure can be known)

known) by such council; and under such restrictions, as the prudence of that council would see proper: Under such an establishment, every case of service that could arise, is provided for; and every case of danger that might arise from a predominant military power, is guarded against.

I must the rather suppose that the military establishment, will have that mode given to it; as already the commander in chief, (as the commission now stands,) is specially instructed, in “making any such preparations as shall be necessary, and are not contained in his general instructions, that he shall take the opinion and assistance of the governors.”

S E C T I O N IV.

The State of the Courts of Judicature.

A Review and settlement of doubted points, is no where more necessary, than in the maxims and rules of their law, and the state of their courts. It is a rule universally adopted through all the colonies, that they carried with them to America the common law of England; with the power of such part of the statutes (those concerning ecclesiastical jurisdiction, and the local municipal regulations of the realm, excepted) as were in force at the time of their establishment: but, as there is no fundamental rule, whereby
to

to say, what statutes are admissible, and what not; if they admit all, they admit the full establishment of the ecclesiastical jurisdiction, from which they fled to this wilderness for refuge.—If they once make a distinction of admitting some, and rejecting others; who shall draw the line, and where shall it pass? Besides, as the common law itself, is nothing but the practice and determination of courts on points of law, drawn into precedents; where the circumstances of a country and people, and their relation to the statutes and common law differ so greatly; the common law of these countries, must, in its natural course, become different, and sometimes even contrary, or at least incompatible, with the common law of England; so as that, in some cases, the determinations arising both from the statute and common law of the realm *must be rejected*. This renders the judicatories of these countries, vague and precarious; dangerous if not arbitrary: This leads necessarily (let what care will be taken, in forming and enacting their provincial laws) to the rendering of the common law of the country incompatible with, if not contrary to, and independent of, the law of the mother country; than which nothing can be more disadvantageous to the subject, and nothing more derogatory from the power of the government of the mother country;

country ; and from that fundamental maxim, that the colonists shall have no laws contrary to those of the mother country.

I cannot avoid quoting here at length, a very precise and just observation of the author of the history of New York. “ The
 “ state of our laws opens a door to much
 “ controversy. The uncertainty with re-
 “ spect to them, renders property precarious,
 “ and greatly exposes us to the arbitrary de-
 “ cision of bad Judges. The common law
 “ of England is generally received, together
 “ with such statutes as were enacted before
 “ we had a legislature of our own ; but our
 “ courts exercise a sovereign authority in
 “ determining, *what parts of the common and*
 “ *statute law* ought to be extended ; for it
 “ must be admitted, that the difference of
 “ circumstances necessarily requires us, in
 “ some cases, to *reject* the determination of
 “ both. In many instances, they have also
 “ extended even acts of parliament, passed
 “ since we have had a distinct legislation,
 “ which is greatly adding to our confusion.
 “ The practice of our courts is not less
 “ uncertain than the law. Some of the
 “ English rules are adopted, others re-
 “ jected. Two things therefore seem to
 “ be absolutely necessary for the public se-
 “ curity,

“ First,

“ First, *The passing an act for settling the*
 “ *extent of the English laws.*

“ *Secondly, That the courts ordain a ge-*
 “ *neral set of rules for the regulation of the*
 “ *practice.*”

From this representation of things, by an eminent practitioner in those courts, it must be seen that *something* is wanting, to fix determinately the judicial powers. — But from a further review, made by government here, it will be found that *much more* is wanting. — First, to determine (I do not at all take into consideration which way it be determined; only I say it will be necessary to determine) some points on this head, which are, and will otherwise remain in dispute: but which ought, by no means, to be suffered one moment to remain in dispute.

The crown directs its governor, to erect courts, and appoint the judges thereto. — The actual appointment of the judges, is no where *directly* disputed. — But the power of erecting courts, according to this instruction, is, I believe, universally disputed: it being a maxim universally maintained by the Colonists, that no court can be erected, but by act of legislature. — Those who reason on the
 side

side of the crown say—that the crown does not, by erecting courts in the colonies, claim any right of enacting the jurisdiction of those courts, or the laws whereby they are to act.—The crown names the judge; establishes the court; but the jurisdiction is settled by the laws of the realm: — and
 “ * customs, precedents, and common judicial proceedings of a court, are a law to the court; and the determination of courts, make points to be law.”——The reasoning of the Colonists would certainly hold good, against the erection of any new jurisdiction, established on powers not known to the laws of the realm: but how it can be applied to the opposing the establishment of courts, the laws of whose practice, jurisdiction and powers, are already settled by the laws of the realm, *is the point in issue, and to be determined.* It will then be fixed, beyond dispute, whether the crown can, in its colonies, erect, (without the concurrence of the legislature,) courts of Chancery, Exchequer, King’s Bench, Common Pleas, Admiralty, and Probate or Ecclesiastical courts.—If it should be determined in favour of the reasoning, and the claims of the Colonists; I should apprehend that the consideration of the points under this head, would become an object of government here, even in its legis-

* Rep. 16. 4. Rep. 53. fol. 298.

lative capacity.—In which view it may be of consequence to consider, how far, and on what grounds, the rights of the crown are to be maintained by courts of King's Bench, &c.: and how far the revenues by courts of Exchequer; and how far the crown and subject may have relief, by courts of equity.—If in this view we consider the defects which must be found in Provincial courts; those point out the necessity of the establishment of a remedial general court of Appeal; but if we view the only mode of appeal, which at present exists; we shall see how inapplicable, how inadequate that court is. I cannot, in one view, better describe the defects of the provincial courts in these infant governments, than by that very description which my Lord Chief Justice Hales gives of our county courts, in the infancy of our own government: wherein he mentions,

“ *First*, The ignorance of the judges, who
 “ were the freeholders of the county.

“ *Secondly*, That these various courts bred
 “ variety of law, especially in the several
 “ counties; for the decisions or judgments
 “ being made by divers courts, and several
 “ independent judges and judicatories, who
 “ had no common interest amongst them
 “ in

“ in their several judicatories; thereby, in
 “ process of time, every several county,
 “ would have several laws, customs, rules,
 “ and forms of proceedings.—

“ *Thirdly*, That all the business of any
 “ moment was carried by parties and fac-
 “ tions, and that those of great power and
 “ interest in the county did easily overbear
 “ others in their own causes, or in such
 “ wherein they were interested, either by
 “ relation of kindred, tenure, service, de-
 “ pendence, or application.”

Upon the first article of this parallel, it will be no dishonour to many gentlemen sitting on the benches of the courts of law in the colonies, to say, that they are not, and cannot be expected to be lawyers, or learned in the law. And on the second article it is certain, that although it be a fundamental maxim of colony administration, that the colonies shall have no laws contrary to the laws of Great Britain; yet, from the fluctuation of resolutions, and confusion in the construction and practice of the law in the divers and several colonies; it is certain, that the practice of their courts, and their common law, must be not only different from each other, but in the consequence different also from that of Great Britain. In all the colonies,

colonies, the common law is received as the foundation and main body of their law : but each colony being vested with a legislative power, the common law is thereby continually altered : so that (as * a great lawyer of the colonies has said) “ by reason of the
 “ diversity of the resolutions, in their re-
 “ spective superior courts ; and of the seve-
 “ ral new acts or laws made in their assem-
 “ blies severally ; the several systems of the
 “ laws of those colonies grow more and
 “ more variant, not only from one another,
 “ but also from the laws of England.”

Under the third article, I fear experience can well say, how powerfully, even in courts, the influence of the leaders of party, have been felt in matters between individuals. But in these popular governments ; and where every executive officer is under a dependence for a temporary, wretched, and I had almost said, arbitrary support, to the deputies of the people ; — it will be no injustice to the frame of human nature, either in the person of the judges, of the juries, or even the popular lawyer, to suggest ; how little the crown, or the rights of government (when opposed to the spirit of democracy, or even to the passions of the popu-

* Mr. Pratt of Boston, afterwards Chief Justice of New York.

lace) have to expect of that support, maintenance, and guardianship, which the courts are even by the constitution supposed to hold for the crown—Nor would it be any injustice to any of the colonies, to remark in this place, how difficult, (if ever practicable) it is, in any of their courts of common law, to convict any person of a violation of the laws of trade, or in any matter of crown revenue. Some of our acts of parliament direct the prosecution and punishment of the breach of the laws of trade, to take its course in the courts of Vice-admiralty : And it has been thought by a very great practitioner, that if the laws of trade, were regulated on a practicable application of them to the state of the colony trade ; that every breach of them, should be prosecuted in the same way. That there should be an advocate appointed to each court from Great Britain : who, having a proper salary independent of the people, should be directed and empowered to prosecute in that court, not only every one who was an offender, but also every officer of the customs, who through neglect, collusion, oppression, or any other breach of his trust, became such. Here I own, was it not for the precedent already established by some of the laws of trade, I should doubt the consistency of this measure, with the general principle of liberty, as established in the
trials

trials by a jury in the common law courts. If these precedents can reconcile these proceedings to the general principles of liberty; there can be no more effectual measure taken: yet such precedents should be extended with caution. The defect in most, and actual deficiency in many of the colonies, of a court of equity; does still more forcibly lead to the necessity of the measure of some remedial court of appeal and equity. — In all the King's governments, so called, the governor, or governor and council, are the chancellor, or judges of the court of chancery. — But so long as I understand that the governor is, by his general instruction, upon sound principles of policy and justice, restrained from exercising the office of judge or justice in his own person; I own I always considered the governor's taking up the office of chancellor, as a case labouring with inexplicable difficulties. How unfit are governors in general for this high office of law—and how improper is it, that governors should be judges; where perhaps the consequence of the judgment, may involve government, and the administration thereof, in the contentions of parties. Indeed the fact is, that the general diffidence of the wisdom of this court, thus constituted; the apprehension that reasons of government, may mix in with the grounds of

the judgment; have had an effect, that the coming to this court, is avoided as much as possible: so that it is almost in disuse, even where the establishment of it is allowed. But in the charter governments, they have no chancery at all. I must again quote the opinion of * a great lawyer in the colonies:—

“ There is no court of chancery in the charter governments of New England,” [and I believe I may add also in Pennsylvania] “ nor any court vested with power to determine causes in equity, save only that the justices of the inferior court, and the justices of the superior court respectively, have power to give relief on mortgages, bonds, and other penalties contained in deeds: in all other chancery and equitable matters, both the crown and the subject are without redress. This introduced a practice of petitioning the legislative courts for relief, and prompted those courts to interpose their authority. These petitions becoming numerous, in order to give the greater dispatch to such business, the legislative courts transacted such business by orders or resolves, without the solemnity of passing acts for such purposes; and have further extended this power by resolves and orders, beyond what a court of chancery ever attempted

* Mr. Pratt,

“ to

“ to decree, even to the suspending of pub-
 “ lic laws : which orders or resolves are not
 “ sent home for the royal assent. The ten-
 “ dency of these measures is too obvious to
 “ need any observations thereon.” Nor do
 I see how this measure of proceeding can be
 ventured upon in the colonies, or suffered to
 continue by the government here, if it be
 supposed that by 1 Hen. 4. 14. “ it is ac-
 “ corded, and assented, that no appeal be
 “ from henceforth made, or in any wise
 “ pursued in parliament in time to come.”
 The general apprehension of these defects
 occasioned, that at the first planting of the
 colonies, the King in council here in Eng-
 land was established as a court of appeals
 from the provincial judicatories.——At the
 time of settling these colonies, there was no
 precedent of a judicatory besides those within
 the realm ; except in the cases of Guernsey
 and Jersey ; These, remnants of the dutchy
 of Normandy, were not united to or within
 the realm : according to the custom of Nor-
 mandy, appeals lay to the Duke in council ;
 and upon this ground, appeals lay from the
 judicatories of these islands to the King here,
 as Duke in council ; and upon this general
 precedent (without perhaps attending to the
 peculiar case of the appeal, lying to the
 Duke of Normandy, and not to the King)
 was an appeal from the judicatories of the
 colonies to the King in council settled.——

But, besides the inapplicableness of such appeal to the modes of the English law; besides, that this appeal does not actually take place in general; and is in some of the charter colonies actually excluded, except in personal actions, wherein the matter in difference exceeds 300*l.* sterling;—besides the difficulty of this appeal, and the inefficiency of this redress,*—the King in council never being, by the constitution, in any other case, between subject and subject, formed as such a court of appeal from the courts of law—this body scarce ever, in the temporary and occasional sittings, looks like a court; but is rather accidentally or particularly, than *officially* attended.

These general apprehensions and reasonings, upon experience, have led many very knowing and dispassionate men in the colonies, into a conviction of *the necessity of some established and constitutional court of appeal and redress*: and the following measure has not only been suggested, but even taken up as matter of consideration by some of the ablest lawyers in that country—namely, “the establishment of a supreme court of appeal and equity; not confined to any one government, but circuiting through a certain district of governments: perhaps as fol-

* Appeals, in maritime causes, from the civil law courts of admiralty, are of another nature.

“ lows ; one to Nova Scotia, and New Eng-
 “ land ; one to New York, New Jerseys,
 “ Pensylvania, and Maryland ; one to Vir-
 “ ginia, the Carolinas, and Georgia. It has
 “ been imagined, that this court should be
 “ established by a commission issued to two
 “ or more persons for each district, learned
 “ in the law, not only of the mother coun-
 “ try, but of the several governments in its
 “ said district : that this commission should
 “ give full powers of a court of chancery ;
 “ with power also of judging on matters of
 “ law ; to be brought before this court, by
 “ writ of error, from the several superior
 “ courts of the district, which this extended
 “ to.—Such court would become an esta-
 “ blished court of appeals and redress ; would
 “ regulate all the courts of law, so that they
 “ could not exceed their jurisdiction : would
 “ have a general superintendency over all
 “ inferior courts : would tend to establish
 “ some regularity, and introduce a confor-
 “ mity, not only amongst the courts them-
 “ selves, of the different colonies ; but a
 “ conformity also to the courts of the mo-
 “ ther country, in the construction and dis-
 “ pensation of law : such court would (more
 “ than any other measure) not only tend to
 “ preserve the laws, and practice of law in
 “ the colonies, under a constitutional con-
 “ formity to the laws of the mother coun-
 “ try ; but would also maintain that depen-
 “ dency

“ dency therein, which is of the essence of
 “ colony administration.”

There are gentlemen on this side the water; who seeing that this measure is not without defect; and not seeing the necessity of a court of chancery at all, as there is nothing contrary to the fundamentals of law, that these law-courts already established should equatize, (if I may so express myself;) think, that instead of establishing any new courts of chancery; it would be very proper to abolish even those already established—extending the power which the law-courts already take in chancering-bonds, &c. by empowering them to equatize: and after that, to take such measures as may best establish a fixt and constitutional court of appeals here in England.

S E C T I O N V.

The separation of the governor's council of state, from the council as one branch of the legislature.

SENSIBLE of the danger of innovations, and abhorrent from tampering in experiments of politics; I mention the following, rather as a matter of speculation, than to recommend the trial: yet I cannot but observe, that while the constitutions of the governments of the colonies, take so exactly

actly the model of the British constitution ;
 it always struck me as a strange deviation, in
 this one particular, that the governor's coun-
 cil of state, although a distinct, and I had
 almost said an incompatible board with that
 council which is one branch of the legisla-
 ture ; is yet always constituted of the same
 persons, in general nominated, and liable to
 be suspended, by the governor.—One may
 see many advantages, (besides the general
 conformity to the government of the mother
 country,) in having these boards distinct in
 their persons, as well as in their office. If
 the council of state remaining under the
 same constitution as at present, was composed
 of men of the best experience, fortune, and
 interest in the colony ; taken in common
 from the legislative council, the house of re-
 presentatives, or the courts ; while the mem-
 bers of the legislative council, independent
 of the governor for their existence, had all
 and only those powers which are necessary to
 a branch of the legislature ; much weight
 would be added to administration, in the
 confidence and extent of interest, that it
 would thereby obtain : and to the legislature,
 a more true and political distribution of
 power : which, instead of the false and arti-
 ficial lead, now held up by expedients ; would
 throw the real and constitutional balance of
 power, into the hands of government.

C H A P. V.

The question of internal taxation stated as it lies in the actual constitution of our Colonies, and the procedure of our government towards external corporate communities of the like nature.—This state pointed so as to lead to a general union of all the parts of the British dominions.

HAVING thus far examined into the principles of the constitutions of the colonies, in that relation, by which they stood connected with the King as sovereign : and having reviewed those points of colony administration which derive from thence, marking in the course of that review such matters as seem to require the more immediate attention of government : I will proceed to examine those constitutions, in that relation, by which the colonies are supposed to be connected to the parliament ; to the Empire—not only of the *King*, as Sovereign ; but to the Empire of King, Lords, and Commons, *collectively taken* ; as having the whole supreme power in them. The predicament in which the colonies stand, as to their allegiance to the King, is that point which must mark out the mode of executive

tive administration, by which they should be governed : but the precise settlement of *this* relation and connection, between them and the collective Sovereignty as above ;—is the only ground on which those points which have lately come into dispute between the government of Great Britain, and the people of the colonies, can be decided and fixed.

How much soever the colonies, at their first migration, may be supposed to have been, or were in fact, without the Realm, and separated from it ; yet, from the very nature of that union of the community, by which all civil society must subsist ; they could not have migrated, and been absolved of their communion and connection to the Realm, without leave or licence : They had such leave, according to the then forms of the constitution ; and the terms were, that the society, community, or government which they should form, should neither act nor become, any thing repugnant or contrary to the laws of the Mother Country. Here therefore is an express subordination to a certain degree—The Colonists allowed the subordination ; but held their allegiance, as due only to their sovereign Lord the King.—The direct and necessary consequence of this subordination, if taken in the first sense must be,

be, that the legislature of England (afterward Great Britain) must have power to make laws which should be binding upon the Colonies : contrary or repugnant to which, the Colonies could not act, either in their legislative, or executive capacity—contrary to which, they could neither settle nor trade. But if this subordination be understood as to the King as Sovereign of their distinct community in partibus exteris—*dum Rex* (as I stated above) *ei præsit ut caput istius populi non ut caput alterius populi*—the relation and duty is of a different nature.

In the first attempts, indeed, which parliament made to exercise this power of sovereignty, in asserting the right which the people of the realm had, over certain possessions in America, against the exclusive claim, which the King assumed in the property of it—They were told, that it was not proper for them to make laws about America, which was not yet annexed to the crown, by that expression, meaning the Imperium or state of the kingdom, but was of the King's foreign dominions, in the same manner, as Gascoigne or Normandy were ; that they had no jurisdiction over those dominions : and the attempt was dropt. In a second attempt, (wherein they took up the
petition

petition of some settlers of Virginia;) upon the Speaker's reading a letter from the King, the petition was withdrawn—and we find no more of the parliament, as the constitutional legislature of the kingdom, interposing in these affairs, until after the restoration.

In the year 1643, when the two Houses of Lords and Commons, had assumed the sovereign executive power of government, and were, in fact, the acting sovereign; they made an ordinance Nov. 2. * “Whereby
 “Robert Earl of Warwick is made Governor in Chief, and Lord High Admiral
 “of those Islands and other plantations,
 “inhabited, planted or belonging to any,
 “his Majesty's the King of England's subjects, within the bounds, and upon the
 “coasts of America.” At which time, a
 † committee was appointed, for *regulating the Plantations*—The colonies indeed, by this ordinance, changed their Sovereign—But the sovereignty was exercised over them in the same manner, and in the same spirit, as the King had attempted to exercise it, by his commission of 1636, for regulating the

* Scobel's Acts, and Journals of the House of Commons, Nov. 2.

† Journals of the House of Commons, Nov. 2.

Plantations.—That is, the parliament, (not as legislature, but as sovereign,) assumed the same power of making laws, ordinances, &c. for the Plantations: nay, went one step further, in 1646, and charged them with a tax by excise. In 1650 the patent, or commission, of 1643, was revoked; and the same power was lodged in the council of state; who had power * “ to grant commission
 “ or commissions to such person or persons
 “ as they shall think fit, with power to en-
 “ force all such to obedience, as do or shall
 “ stand in opposition to the parliament, or
 “ their authority: and to grant pardons,
 “ and to settle governors in all, or any of
 “ the said islands, plantations and places;
 “ and to do all just things, and to use all
 “ lawful means to settle and preserve them
 “ in peace and safety, until the parliament
 “ shall take further, or other order therein;
 “ any letters patent, or other authority,
 “ formerly granted or given, to the con-
 “ trary notwithstanding.”

During the administration of this sovereignty; an † act passed in 1646, exempt-

* Scobell's Acts.

† Note, These acts or ordinances became the ground-work of that act of parliament, after the restoration, which was called the navigation act, of which we shall take notice, in its proper place.

ing

ing the plantations from all customs, subsidies, taxation, imposition, or other duty, *except the excise: provided*, their trade was carried on in English bottoms; *otherwise*, they were made liable to all these duties. Also, in † 1650, when the Islands of Barbadoes, Bermudas, and Antego, and the country of Virginia, continuing to hold for the King, were considered as in rebellion; all commerce with them was prohibited. At which time also, in the same act, “ all
 “ ships of foreign nations, were forbid and
 “ prohibited to come to, or trade in, or
 “ traffic with, any of the English plantations in America, or any islands, ports,
 “ or places thereof, which are planted by,
 “ or in the possession of the people of this
 “ commonwealth, without license first had
 “ or obtained from the parliament, or
 “ council of state.”

If we consider the parliament acting here, as the sovereign, not the legislature; if we could look upon it as lawful, or *de facto* sovereign, for the time being; yet we should certainly view every exertion of its power, in the same light, and should examine it by the same principles, as we did those of the King, as sovereign, exercised in the issuing

† See the preceding Note.

his grants, charters, or commissions. And if we doubt whether the King, as lawful sovereign, could legally himself exercise, or commission other persons to exercise, those powers, assumed in his commission of 1636, of making laws, ordinances and constitutions for the plantations; considering the inherent, natural and established rights of the colonists—we may *à fortiori*, by much more powerful objections, doubt the right of these powers in the two houses, called then the parliament, acting as sovereign.—No precedent therefore can be drawn from this period.—

We have seen above how at one time the King as sovereign, without the intervention of the parliament, assumed a right, both administrative and legislative, to govern the colonies.—We have seen how the parliament, without the intervention of the King's commission, assumed as sovereign the same powers—But whatever the natural or established rights and liberties of the colonies were, at their first migration, they could not be said, to be legally suspended, abridged or altered by these assumptions of power.

Upon the restoration of the monarchy, when many of the rights of the subject,
and

and of the constitution were settled; *the constitution of the colonies, received their great alteration*: the King participated the sovereignty of the colonies with the parliament; the parliament in its proper capacity, was admitted to a share in the government of them: The parliament then first, taking up the idea, indeed very naturally, from the power they had exercised during the commonwealth; that all these, his Majesty's foreign dominions, and "all these, his Majesty's subjects," were of or belonging to the realm; then first, in the proper capacity of legislature, (supreme legislature of the realm,) interposed in the regulation and governing of the colonies.—And thenceforward, from time to time, sundry acts of parliament were made, not only (1st) for regulating the trade of the colonies; but also (2dly) for ordering and limiting their internal rights, privileges and property; and even (3dly) for taxing them.—In the course of which events; while the Colonists considered this principle as the *Palladium* of their liberties, viz. that they were to be ruled and governed only by acts of parliament, together with their own laws not contrary to the laws of England; the King in the same course of events called in the aid of parliament, to enable him to regulate and govern the colonies.—The British merchants

chants at times applied to parliament, on the affairs of the colonies : and even the *West India* Planters applied to the same power, to carry a measure against the colonies of North America. Hence we find enacted, in the course of those events,

I. The navigation act ; the sugar, and other acts, for regulating and restraining the trade of the colonies.

II. Also Acts, 1. altering the nature of their estates, by treating real estates as chattels. 2. Restraining them from manufactures. 3. Regulating their money. 4. Altering the nature of evidence in the courts of common law ; by making an affidavit of a debt before the Lord mayor in London, &c. certified in writing, an evidence in their courts in America. 5. Dissolving indentures ; by discharging such of their servants as should enlist in the King's service.

III. Also Acts, fixing a tax upon American sailors, payable to the Greenwich Hospital. 2. Likewise imposing taxes ; by the several duties payable on fundry goods, if intended as materials of trade, to be paid *within the province*, or colony, *before* they can be put on board, for exportation. 3. Also,

3. Also, the revenue arising from the *duties* payable on the postage of letters. 4. Also, the tax of quartering soldiers, and supplying them in their quarters. Lastly, establishing the claim which Great Britain makes, of taxing the colonies in all cases whatsoever, by enacting the claim into a declared right, by act of parliament.

From the uncontroverted, and universal idea of the subordination of the colonies to the government of the mother country; this power, by which the parliament maketh laws that shall be binding on the colonies, hath been constantly exerted by the government of England, (afterwards Great-Britain) and submitted to by the colonies. The fundamental maxim of the laws of those countries, is; that 1st, the common law of England; together with such statutes (the ecclesiastical laws and canons excepted) as were enacted before the colonies had a legislature of their own—2dly, The laws made by their own legislature; together with 3dly, such acts of parliament, as by a special clause are extended to America, since that time; are the laws of each province or Colony. The jurisdiction and power of every court established in that country; the duty of every civil officer; the process of every transaction in law and business

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ness there ; is regulated on this principle. Nay further, every * act of parliament passed since the establishment of the colonies ; *which respects the general police of the realm, or the rights and liberties of the subjects of the realm* ; although not extended by any special clause to America by parliament ; although without the intervention, or express consent of their own respective legislatures or representatives ; hath been considered, and I may venture to say adopted, as part of the law and constitution of those countries : but by what principle of our constitution ; by what maxim of law ; this last practice hath been established, is not so easy to ascertain ; any more than it will be easy to fix any rule, when the colonies shall adopt, or when they may refuse, those kind of laws of the mother country. This arises, (as I have said,) from some vague indecisive idea that the colonies are of, or some parts of, the realm ; but how, or what parts, or whether any parts at all, has never yet been thoroughly examined.

We have seen what was, in reality, the dependance and subordination of the colonists to the King, while they were supposed to be subject to him in a feignoral capacity——We have seen what must have

* As the bill of rights, the 7th Wil. 3. &c.

been the same subordination, while they were supposed to be subject to the two houses of Lords and Commons, as sovereign in the same capacity.—Let it be observed from the tenor of what I have said above—that my idea here extends only to the fact, does not go to any decision of the right.

Let us take up the next idea, that while they are not of the body of the realm, while they are no parts or parcel of the same; but bodies corporate and politick, distinct from and without the realm : * “ They are nevertheless, (as the act of parliament expresses itself) and of right ought to be subordinate unto, and dependant upon the imperial crown of Great Britain, [i. e. the realm ;] and that the King’s Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons of Great Britain assembled in parliament; had, hath, and of right ought to have, full power and authority, to make laws and statutes of sufficient force and validity, to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever.”—In this idea we have a very dif-

* 6 Geo. III. c. 12.

ferent state of the relation ; namely, the imperial crown of Great Britain, (the *King, Lords and Commons, collectively taken,*) is stated *as sovereign*, on the one hand, and *the Colonists as subjects* on the other.—

There is no doubt, but that in the nature, reason, justice and necessity of the thing ; there must be somewhere, *within* the body politic of every government, an absolute power. The will of a free agent is absolute : but so long as the principle of agency is *internal*, exerted only over that which is in essential communion with it ; the will is its own will—and is free because its own will is absolute. The political freedom of Great Britain, consists in this power's being lodged no where but in King, Lords and Commons, in parliament assembled. This power is absolute throughout the realm,—and yet the rights and liberties of the subject are preserved ; as the *Communitas Populi* is the *body*, of which this *Imperium* is the soul, reasoning, willing, and acting, in absolute and intire union with it, so as to form one political person.

This power is absolute throughout the dominions of the realm : yet in the exercise of this power, by the imperial crown of Great Britain towards the colonies ; (that is, by

by the King's Majesty, with the Lords and Commons in parliament assembled) if they are not of this body of the realm; but are still to be considered as distinct bodies; foreign, or extraneous parts, without the realm, and the jurisdiction of this kingdom; * there is surely some attention due to *the nature and extent of this absoluteness* in this case, that is to say, when exerted over an agent external, and not in communion with the will and principle of agency.

If the people of the colonies, are no part of the people, or of the body, of the realm of Great Britain,—and if they are to be stated in the argument, as subject to the King, not as the head of that compound political person, of which they are in part the body; *sed ut caput alterius populi*, as wearing the imperial crown of Great Britain; as the head to which the realm of Great Britain is the body, and of which body the parliament is the soul, but of which the colonies are no part—then this imperial supreme magistrate, (the collective power of King, Lords and Commons,) must be stated as sovereign on the one hand; while the people of the colonies, stand as subjects on the other.—

Taking the relation of the colonies to the

* As Mr. Blackstone expresses it in B. 1. c. 3.

mother country in this view, (when the argument is stated in this manner,) we surely may say with exactness and truth, that if the colonists, by birthright, by nature or by establishment; ever were entitled to all the rights, privileges, liberties and franchises of Englishmen; *the absolute power of this sovereign must have some bounds*; * must from its own nature, from the very nature of these rights of its subjects; *be limited in its extension and exercise*. Upon this state of the case, questions will necessarily arise, which I will not take upon me to decide, whether this sovereign can disfranchise subjects, so circumstanced, of their rights, because they are settled beyond the territorial limits of the realm—whether these subjects, thus circumstanced, can, (because they are supposed not to be of the realm,) lose that interest in the legislative power, which they would have had, if they were of, or within the realm.—Whether this natural right which they have to personal liberty, and to political freedom, is inherent in them, “to all intents and purposes, as tho’ they had been born within the realm:” Or whether, “† it is to be understood, with very

* Vide The Reply of the Council of the Province of Massachusetts Bay, to Governor Hutchinson’s speech, 1773.

† As Mr. Blackstone expresses it, Introduction § 34.

“ many

“ many *and very great restrictions.*” Whether these people, from the nature of these inherent rights and liberties, are intitled to have, and have a right to require, a constitution of the same political liberty as that which they left : or whether * “ the whole
 “ of their constitutions are liable to be new
 “ modelled and reformed,” at the will of this sovereign : Whether the legislative part of their constitution is (they being distinct, altho’ subordinate, dominions ; and no part of the mother country ;) an inherent right of a body of Englishmen, so circumstanced : or whether it can be suspended, or taken away, at the will of this sovereign ? In stating these doubts, I do not here add the question, which hath of late been raised ; on the right which this sovereign hath, or hath not, to impose taxes on these subjects, circumstanced as above stated, without the intervention of their own free will and grant. — Because, let these other questions be decided howsoever they may ; this stands upon quite other ground, and depends upon quite other principles.

So long as the government of Great Britain claims a right to act under this idea, of

* Mr. Blackstone, Ibid.

the relation between the mother country and the colonies ; so long as the colonies shall be esteemed in this relation, as “ *no part of the mother country* ;” so long will the colonists think they have a right to raise these questions : and that it is their duty to struggle in the cause, which is to decide them : so long will there be faction and opposition, instead of government and obedience.

But the matter of perplexity is much stronger, in the questions which have been raised, as to the right of imposing internal taxes on the subject, so stated.

In the same manner as in the act of granting a general pardon, the King alone is the originating and framing agent ; while the other two branches of the legislature, are only consenting thereto, that it may be an act of parliament ; so in the same manner, in the act of granting supplies, by imposing taxes on the people, the house of commons is the sole originating and framing agent, “ as to the matter, measure and time ;” while the King and lords act only as consentients, when it becomes an act of parliament. In one case, the King acts as chief magistrate, representing and exercising the collective executive power of the whole realm :

realm : in the other, the commons act, as
 “ granting for the counties, cities and bo-
 “ roughs whom they represent *.”

If in the act of taxing, the parliament acted simply in its capacity of supreme legislature : *without any consideration had to the matter of representation* vesting in the commons ; I know of no reason that can be assigned, why the resolve to give and grant, should not originate from, and be framed or amended by, another branch of the legislature, as well as by the commons. The only reason that I find assigned ; and the only one I venture to rely upon, for explaining that right of the commons to originate, and form the resolve of giving and granting, and to settle the mode of charging and imposing taxes on the people, to make good those grants ; and to name commissioners, who shall actually levy and collect such taxes ; “ as a fundamental constitution ;” is that which the commons themselves have given ; that “ the commons grant for the
 “ counties, cities and boroughs *whom they*
 “ *represent,*” —and that the word “ grant,” when spoken of the lords, “ must be under-
 “ stood only of the lords assent, to what the
 “ commons grant ; because the form of law
 “ requires, that both join in one bill, to

* Comm. Journ. 1672.

“ give it the force of law.”——Therefore, previously inserting this caution, that I do not presume to form an opinion, *how* they represent the property of, or grant for the lords ; and without reasoning on *this mode* of the right ; (“ for it is a very unsafe thing in “ settled governments, to argue the reason “ of the fundamental constitutions !”) The fact is ; that this right is *ab initio*, a fundamental constitution, in *that the commons grant for the counties, cities and boroughs whom they represent ; and that they do, in fact, represent the property of the realm*, although copyholders, and even freeholders within the precincts of boroughs, or within the counties of cities, (not being freemen or burgesses in such boroughs,) have no vote in the election of them :——For the property of the copyholder is represented by it's lord ; and the property within the borough or city, is actually represented by the corporation, or body of freemen in such borough or city, who chuse the member of parliament.

Although it should be willingly acknowledged without dispute, by the Americans, even upon this stating of the case ; that the legislative power of parliament, extends throughout America in all cases whatsoever ; yet, as to the matter, measure and time, in
the

the article of taxes, originating with, and framed by the commons ; “ granting for the “ counties, cities and boroughs whom they “ represent ; ” — it would greatly relieve the perplexity and doubts, which have raised questions, (much agitated ;) if any one could, according to this state of the case, and according to this reasoning ; show *how the commons do represent the property in America, when stated as being without the realm ; and no part of any county, city or borough of the same : and how the freeholders of that property are represented ; even as the copyholder and landholder within a borough or city is represented.*

* For, so long as the case shall be so stated, that the Colonies are neither within the realm, nor any part of it ; or of any county, city or borough within the same ; until it can be positively demonstrated, either that in granting supplies, by imposing taxes, the commons *do not act in virtue of their representing* the counties, cities and boroughs for whom they grant ; or that in granting for the counties, cities and boroughs whom they represent, they do also represent the property of America ; the people of America will distinguish their not acknowledging the power of the commons of Great Britain in the case of granting for them, as a very dif-

* Vide the case of Chester, Appendix No. VII.

ferent case, from that under which they acknowledge their subordination to the legislative power of parliament. — Nay, further, every reason which the commons give for that fundamental right of granting supplies, and imposing taxes on the counties, cities and boroughs whom they represent; and every precedent which the commons alledge for the exercise of this right; the people of America will use, and alledge for and apply to their own special case, in a way that may be very perplexing, unsafe and dangerous to fundamental constitutions. But all this perplexity and danger, arises from stating the Colonists as subjects of the realm; at the same time that the Colonies are stated, as being no part of the realm; as no otherwise connected to it, than by their subjection.

On the other hand, let us review the state of this matter, as it seems actually to have stood.—If the state of it which we shall represent, cannot and must not be supposed right in law; may we be permitted to state it, at least, as an hypothesis?

The Colonies, from their remote distance, and local circumstances, could not have been incorporated into any county, city or borough: at least so it is said: and yet, at the same time, they are supposed to be, and considered

sidered as, within the diocese of London. The Colonists were considered, as having gone forth from, and having *quitted the realm*; as having settled on lands *without the realm*.

The Colonies thus remote and separate from the realm, were formed, and incorporated into distinct communities: were erected into provinces: had the *jura regalia* granted to them: were, in consequence thereof, to all intents and purposes, *counties palatine*; in like and as ample manner as the county palatine of Durham was; some matters of form excepted. They were dominions of the King of England; although, according to the language of those times, “not yet annexed to the crown.” They were under the jurisdiction of the King, upon the principles of feudal sovereignty; although considered “* *as out of the jurisdiction of the kingdom*.” The parliament itself (doubting, at that time, whether it had jurisdiction to meddle with those matters,) did not think proper to pass bills concerning America.—The Colonies had therefore legislatures peculiar to their own separate communities: subordinate to England; in that they could make no laws contrary to the laws of the mother country: but in all

* Blackstone, B. 1, c. 5.

other matters and things, respecting their own internal rights, property and jurisdiction, free, uncontrouled and compleat legislatures, in conjunction with the King or his deputy, as part thereof.

When the King, at the restoration, participated this sovereignty over *these his foreign dominions*, with the lords and commons ; the Colonies became *in fact*, the dominions of the realm——became subjects of the kingdom. —— They came, in fact ; and by an actual, constitutional exercise of power ; under the authority and jurisdiction of parliament : They became connected and annexed to the state : By coming as parts of the British realm, (not as a separate kingdom, which is the case of Ireland ;) under subjection to the parliament ; they became participants of the rights and liberties on which the power of parliament is founded. By the very act of extending the power of parliament over the Colonies, *the rights and liberties* of parts participants of the realm must be also extended to them ; for, from the nature of the British constitution, from the constitution of parliament itself ; they, as parts, can be subject by no other mode, than by that in which parliament can exercise its sovereignty ; for, the nature of the power, and the nature of the subjection, must be reciprocal. They became therefore
annexed,

annexed, although perhaps *not yet united parts* of the realm. But to express all that I mean ; in a proposition that can neither be misunderstood, nor misinterpreted ; they from that moment (whatever was their prior situation) stood related to the crown and to the realm, literally and precisely, in the same predicament, in which the county Palatine of Durham stood : that is, subject to be bound by acts of parliament in all cases whatsoever ; and even “ liable to all rates, “ payments and subsidies granted by parlia- “ ment :” although the inhabitants of these countries, “ have not hitherto had the li- “ berty and privilege, of sending knights “ and burgessees to parliament, of their own “ election.” And, in the same manner also ; because in that, the inhabitants of the county Palatine of Durham, were liable to all rates, payments and subsidies granted by parliament ; and were therefore concerned, (with others, the inhabitants of this kingdom,) to have knights and burgessees in parliament, *of their own election*, to represent the condition of their country, as the inhabitants of other countries had ; it was by act of parliament enacted, that they should have such : In the same manner, I say, whenever these colonies shall be considered in parliament, as objects of internal taxation ; and be rendered liable to rates, payments and subsidies, granted
by

by parliament out of their property—— they will become concerned, equally with others the inhabitants of this kingdom, to have knights and burgesſes in parliament, *of their own election*, to represent the condition of their country, as the inhabitants of other countries have, and of right ought to have. Although a right in parliament, to make laws for governing, and taxing the Colonies; may and must, *in the order of time*, precede any right in the Colonies, to a ſhare in the legiſlature; yet there muſt ariſe and proceed, *pari paſſu, in the order and nature of things*, a right in the Colonies to claim, by petition, a ſhare in the representation, by having knights and burgesſes in parliament, of their own election, to represent the condition of their country. And as in ſuch circumſtances, this right ſhall ariſe on one hand; ſo on the other, it may become a duty in government, to give them power to ſend ſuch representatives to parliament: nay, could one even ſuppoſe the Colonies to be negligent in ſending, or averſe to ſend, ſuch representatives; it would, in ſuch caſe, as above ſettled, become *the duty of government to require it of them*.

Although from the ſpirit and eſſence of our conſtitution, as well as the actual laws of it, “ the whole body of the realm, and
“ every

“ every particular member thereof, either
 “ in person, or by representation, (upon
 “ their own free election) are, by the laws
 “ of the realm, deemed to be present in the
 “ high court of parliament *,” yet as the
 circumstances of the several members of
 this body politic must be often changing;
 as many acquisitions and improvements, by
 trade, manufactures and Colonies, must
 make great changes in the natural form of
 this body; and as it is impossible, both
 from the gradual nature of these changes,
 and from the mode of the representative
 body, that this representative body can, in
 every instance and moment, follow the
 changes of the natural, *passibus æquis*; it
 must necessarily at times, from the nature
 of things, *not be an actual representative*—
 although, from the nature of the constitu-
 tion of government, it must, in the interim
 continue to be, a just and *constitutional re-*
presentative. And hence, from the laws of
 nature, as well as from the nature of our
 own laws and constitution, arise the justice
 and right, which parliament always hath
 had, to render several members of the realm,
 liable to rates, payments and subsidies,
 granted by parliament; although such
 members have not, as yet, had the liberty

* 1 Jacobi I.

and privilege to send knights and burgesſes to parliament, of their own election. Yet on the other hand, as the principle, that no free people ought to be taxed, but by their own conſent, freely originating from, and given by themſelves or their representatives, is invariable, abſolute and fixed in truth and right; ſo the mode of the representation in parliament, hath from time to time, altered; ſo as to extend to, and to ſuit the mode, under which the represented were, from time to time, found to exiſt. Hence it was, that many towns, boroughs, counties, and even dominions, which (from any thing that did exiſt, or was to be found in their *antiquas libertates*, and *liberas conſuetudines*,) were not previously represented by members of parliament of their own election; have, as they acceded to the realm, or encreaſed within the realm, (“ ſo as to be equally con-
 “ cerned, to have knights, and burgesſes in
 “ parliament of their own election, to repre-
 “ ſent them equally as other inhabitants of
 “ the realm have,” according to ſuch modes as were at the time admitted to be legal and conſtitutional,) been called to a ſhare in the common-council of the realm. Hence it was that the county Palatine of Durham, after many attempts, and a long ſtruggle, was admitted to the privilege of ſending knights and burgesſes to parliament;—

ment;—but of this case enough has already been said.

In the time of King Henry VIII. we find parliament *reasoning and acting* upon this very principle in the case of the county of Chester.—The *reasoning of parliament* sets forth †, “ that the King’s county Palatine
 “ of Chester, had hitherto been excluded
 “ out of his high court of parliament, to
 “ have any knights within the said court.—
 “ By reason whereof, the inhabitants had
 “ sustained manifold disherifons, losses and
 “ damages, as well in their lands, goods
 “ and bodies, as in the good, civil and po-
 “ litic government of their said county.—
 “ That forasmuch as they have alway hi-
 “ therto *been bound by the acts and statutes*,
 “ made and ordained by the King, by au-
 “ thority of the said court, as far forth as
 “ other counties who had knights and bur-
 “ gesses in parliament;——and yet had
 “ neither knights nor burgesses:—The in-
 “ habitants for lack thereof have been of-
 “ tentimes grieved with acts and statutes *,
 “ made within the said court derogatory to
 “ their ancient privileges and liberties, and
 “ prejudicial to the commonwealth, quiet-
 “ ness, rest and peace of the King’s bounden

† 34 and 35 of Henry 8.

* Vide Appendix, No. VII.

“ subjects inhabiting within the same. For
 “ remedy whereof, the parliament *acts*—
 “ and it is enacted, that the county of
 “ Chester should have two knights, and
 “ the city two burgesſes, which knights
 “ and burgesſes are to have the *like voice and*
 “ *authority*, to all intents and purpoſes,—
 “ the like liberties, advantages, dignities,
 “ privileges, &c. with other knights and
 “ burgesſes.”

Hear alſo, *the reaſoning*, and view the
acts of parliament, in the caſe of the acqui-
 ſition of the dominions of Wales *, ſubject to
 the imperial crown of, although not yet incor-
 porated or annexed to, the realm of England.
 The reaſoning ſets forth, that Wales ever
 had been united and ſubject to the imperial
 crown of the realm, and to the King, *its*
very Head, Lord and Ruler.—That the
 principality and *dominions*, had rights, laws
 and customs, different from the laws, &c.
 of *this realm*.

That the people of *that dominion*, had a
 ſpeech different from the tongue uſed in
this realm.

—Thence ſome *ignorant people made a*
diſtinction between the King's ſubjects of the

* 27th of Hen. 8. cap. 6.

realm ; and his subjects of the principality.— His Highness, therefore, out of love to his subjects of the principality, and to bring *his subjects of the realm and his subjects of the principality* to concord and unity, by advice of Lords and Commons, and by authority of the same hath enacted, That henceforth and for ever, his said *country and dominion of Wales*, shall be incorporated, united and annexed to *this realm of England*: and that all, singular person and persons, born, and to be born in the said principality of Wales, shall have, and enjoy all the same freedoms, liberties, rights, privileges and laws within this his realm, and *other* the King's dominions, as other the King's subjects, naturally born within the same, have, enjoy and inherit: and that knights and burgeses shall be elected, and sent to represent them in parliament, with all the like dignity, pre-eminence and privilege, as other knights and burgeses of the parliament have and be allowed.

We also find, upon the acquisition of Calais to the King's dominions, that King Edward turned all the French inhabitants out of it; planted *an English Colony there*, with all the rights, freedom, privileges, &c. of natural born subjects within the realm;

and that *this Colony sent burgesſes* to parliament.

Seeing then how exactly, and to the minuteſt circumſtance ſimilar, the caſe of the *Colonies erected into provinces*, is to theſe counties Palatine; to thoſe acquired and annexed dominions: can the ſtateſman, whether in adminiſtration or in parliament, reaſon or act towards the Colonies in any other mode, or by any other acts, than what the foregoing give the wiſeſt and happieſt examples of?

It is a firſt and ſelf-evident truth; without which all reaſoning on political liberty is *certâ ratione inſanire*—That a free people cannot have their property, or any part of it, given and granted away *in aids and ſubſidies*, but by their own conſent; ſignified by themſelves or their legal representatives. It is alſo, (as hath been marked before) an undoubted principle and law of our conſtitution, that the whole body of the realm, and every particular member thereof, either in perſon, or by representation, (upon their own free elections,) are deemed to be perſonally preſent in the high court of parliament: And, that the King, Lords and Commons aſſembled in parliament, are the *commune*

commune concilium, the common-council of the realm; ——— the legal and constitutional representative of the whole body of the realm, and of every particular member thereof: having perfect right, and full power and authority to make laws and statutes of sufficient force and validity to bind the Colonies and people of America, subjects of the crown, in all cases whatsoever. ——— But as various external acquisitions and dominions, may accede to this body, still remaining without the realm, out of its jurisdiction; not yet annexed, united and incorporated with the realm—As various and divers new interested individuals, may arise and increase within the realm; which, although *constitutionally represented* in parliament, cannot be said to have there *actually* representatives of their own free election.—Let us look and see how government, to be consistent with itself and its own principles, hath acted in such cases.

Parliament hath never ceased to be deemed the constitutional representative of the whole dominions of the realm: Hath never ceased to act as the *commune concilium*, both in the case of making laws, which did bind these subjects under this predicament; as also, in the case *de auxilio assidendo*; and rendered them liable to all rates, payments and subsidies,

fidies, granted by parliament : Yet on the other hand, (“ these subjects being equally “ concerned to have representatives in parlia- “ ment, of their own election, as other inha- “ bitants of the realm ”) Parliament hath al- ways given them power to send such ; when they have arisen to an importance, and a share of interest in the state, which could justify the measure. On this principle, and by this proceeding, has the number of representa- tives in parliament, increased from between two and three hundred, to above five hun- dred.

In other cases ; as in the case of the Ame- rican Colonies, where these acquisitions *in partibus exteris*, have been deemed so far se- parate from the kingdom ; so remote from the realm, and the jurisdiction thereof ; that they could not have been incorporated into any county, city or borough within the realm ; that the state and condition of their country could scarcely be said to be within the actual cognizance of parliament ; where the local internal circumstances of their property, could scarce fall within the ways and means adopted by parliament for taxes — where the peculiar nature of their establish- ment required the constant and immediate presence of some power to make orders, or- dinances and laws, for the preservation and
well

well government of those countries—There government hath constantly and uniformly established and admitted the governor, council and representatives of the freeholders of the country assembled, to be a full and perfect legislature, for the making laws and imposing taxes in all cases whatsoever, arising within, and respecting the body of that community—full and perfect within itself, to all the purposes of free debate, free will, and freedom of enacting — although subordinate to the government of the mother country, as being bound by its laws ; and not capable to act, or to become any thing contrary or repugnant to it. Although parliament hath, in some cases, as before recited, imposed taxes, arising from customs and duties, paid by the trade and intercourse of the inhabitants of the Colonies. — Yet, from the first moment that they have been considered as capable of paying a certain quota, to the extraordinary services of government ; and as being in circumstances proper to be required so to do—government fixed the mode ; and hath hitherto invariably continued in the same ; of doing this by requisition from the crown, to be laid before the assembly by his Majesty's commissioner the governor.

If it be the spirit and sense of government, to consider these Colonies still as thus
 3 separate

separate unannexed parts ; as incapable, from their local circumstances, of having representatives of their own election, in the British parliament ; — the same sense and spirit will, I suppose, continue to the Colonies this liberty* ; “ which, through a tenderness in the legislature of Great Britain, to the rights and privileges of the subjects in the Colonies, they have hitherto always enjoyed ; the liberty of judging, by their representatives, both of the way and manner in which internal taxes should be raised within the respective governments, and of the ability of the inhabitants to pay them :” — will think it wise, if not just also, (from its having become, I had almost said, a constitutional mode of administration, through the establishment and invaried continuance of the precedent) to raise the Provincial quota of internal taxes, by making, in each case, a requisition to the assemblies, to grant subsidies, adequate to the service of government ; and in proportion to the circumstances of the Colony or province which they represent.

This is the alternative ; either to follow the sober temper and prudence of this esta-

* Petition of the general assembly of the Province of Massachusetts-bay.

blished mode; or to adopt the wisdom, justice and policy of the reasoning and of the acts of parliament, in the cases of Chester, Wales and Durham. — There is no other practicable or rational measure of peace.

If these external circumstances of our American dominions, and the internal circumstances of our police and parties; lead administration to this measure, of continuing to derive aids and subsidies from the Colonies, by the establishment of general assemblies of the states in each Colony, upon the precise model of the parliament in the mother country; it may be very well justified by example, and from precedent, in the government of the Roman Colonies.

Although the Romans governed their provinces by an absolute imperium, which superseded all civil government, properly so called; yet the inhabitants of their *Colonies* were, in their civil constitution*, divided

* Constituendum est ad urbis instar, in *Coloniis* Plebem a Patribus discriminatum; & ad exemplum Senatus amplissimi ordinis, decurionum ordinem (quem et Senatum dictum in Pompeia lege de Bithyniis Plinius scribit) in civitatibus orbis Romani ex decimâ parte *Colonorum*, concilii publici gratiâ, conscribi solitum fuisse a triumviris quos S P Q R creabat ad *Colonias* aut *latinorum* aut *civium* ducendas; cumque in *Coloniis* veluti in speculo effigies *Repub. Rom.* cerneretur simulacrum quoddam Senatûs in illis, & demum in *municipiis* ex decurionum ordine fuit.

Marcus Vetranius Maurus de jure liberorum. Cap. 8.

into Senate and People, exactly according to the spirit of the constitution of the city itself: And conform exactly to the model of the sovereign senate. As the order of the *patres conscripti* were the constituents of that body,—so the order of the *decuriones*, (the tenth part from amongst the people) were for the purpose of forming a like council, enrolled by the triumvirs whom the Roman state had created, to lead out Colonies either of Citizens or Latins. — By this establishment, a senate, (for this council is literally so called in the Pompeian law *de Bithynis*,) was formed in every Colony—and latterly, in every municipal corporation also.

As the ordinary supply of the senate in the city, was from the annual election of magistrates; who, in consequence of their having been invested with such magistracy, acquired a seat there — as the extraordinary supply of senators, was by Kings, Consuls, Censors, or Dictators (according to the different times and periods of the Roman government) proposing good and true citizens to the people — of whom those, who were approved, were enrolled *Conscripti, Senatores jussu populi*: So the ordinary supply of the members of this Colony senate, or curia; was from the *decuriones*, the magistracy of that community, — while the extraordinary supply, was by the triumvirs enrolling, in
like

like manner, the senator at the first establishment; or the * governors, upon extraordinary cases, which might afterwards arise——proposing honest and honourable men, from whom the people chose those who were enrolled. — Both council and result, were left to the community. — The council in the senate; the result in the people — who made, and were governed by their own laws; subordinate to the laws of the empire: who created, and were governed by, their own magistrates.

When this island was itself, in a provincial state, under the empire of Rome; several Colonies and municipal districts within the same, were happy under this very constitution of being governed by a representative, magistracy, and legislature, which the British Colonies now contend for. The manuscript of Richard of Cirencester, lately discovered, tells us which they were.——The Colonies were, London, Colchester, Sandwich with Richborough, Bath, Caërleon in Wales, West Chester, Gloucester, Lincoln and Chesterford. The municipal districts; York and St. Albans. To which perhaps we may add, from the same list, as *Civitates, Latio jure*

* Vide Plinii epist. et Trajani Resp. lib. x. epist. 80 and 81.

donatæ ; Old Sarum, Cirencester, Carlisle, Burton north of Lancaster, Caster by Peterborough, Alkmanbury and Catteric in Yorkshire, Perth, Dunbritton and Inverness.

If this mode of administration for the Colonies, be adopted by government, especially in the article of taxation—it will behove administration, to be thoroughly informed of, and acquainted with the circumstances of the Colonies, as to the quota or share of the taxes which they are capable to bear, and ought to raise ; not only in proportion to those raised by the mother country, but amongst themselves : It will become the duty of ministry, to endeavour to persuade the Colonies to establish, *as far as their circumstances will admit of it*, the same mode of taxation, by stamp duties, excises and land tax, as is used in this country :— That the property and manufactures of the Colonies may not, by an exemption from these, have a preference and advantage over the property and manufactures of the mother country. It will require all the wisdom and interest, all the firmness and address, of a thoroughly established ministry, to carry these points : — As the Colonies, no doubt, will keep off such incumbrances as long as they can ; and as the assemblies of the Colonies, will, under this constitution, reasonably

argue,

argue, that as to the matter, extent, mode and time of taxes, they, (the representative of the people for whom they grant,) are the only proper and constitutional judges.

Government ought at all times to know the numbers of the inhabitants; distinguishing the number of the rateable polls.

2. The number of acres in each province or Colony; both cultivated, and lying in waste. — The number of houses — and farms, &c.

3. The numbers and quantity of every other article of rateable property; according to the method used by the provinces themselves, in rating estates, real and personal.

4. Government ought always to know what the annual amount of the several province taxes are; and by what rates they are raised, and by what estimate these rates are laid.

From whence, (by comparing the estimation with the real value, for the time being, of each article,) they may always estimate nearly the real value of the property of such province or Colony. All which, compared with the prices of labour, of provisions and
European

European goods imported ; with the value of their manufactures, the interest of money, and their exports ; will fully and precisely mark their abilities to bear, and the proportion which they should bear, of taxes, amongst one another, and with the mother country.

The following estimates of the provinces, Massachusetts-Bay to the northward, of South-Carolina to the southward, and of New Jersey in the center, are founded in the tax-lists of each province ; which tax-lists, being of * ten years standing, must, in encreasing countries as the Colonies are, fall short of the numbers and quantity which would be found on any tax-list faithfully made out at this time. The estimates which I have made thereon are in general at such an under-valuation, that I should think no man of candour in the provinces will object to them ; although they be, in some articles, higher than the valuation which the legislatures directed so long ago to be made, as the fund of the taxes that they order to be levied on them. This valuation of the estates, real and personal, gives the gross amount of the principal of the rateable property in the

* That is ten years back from the time of the publication of the first edition of this book in 1764.

province. I think I may venture to affirm, that no man, who would be thought to understand the estimation of things, will object that I over-rate the produce of this property, when I rate it at six *per cent.* only of this moderate valuation; when he considers that money, in none of those provinces, bears less than six *per cent.* interest; and that under loans of money, at five *per cent.* most of the best improvements of the country have been made.

The valuation of the provinces, New-York and Pennsylvania; lying on each side of New-Jersey; are calculated in a different manner, by taking a medium between the supposed real value, and the very lowest rate of valuation. Without troubling the reader, or encumbering the printer with the detail of these tax-lists, and the calculations made thereon; I will insert only the result of them, as follows.

The provinces under-mentioned could annually raise, by one shilling in the pound on the produce of the rateable property, estates real and personal in each province,

	£.	s.	d.
Province Massachusetts-Bay,	13172	7	11
New-York, - -	8000	0	0
New-Jersey, - -	5289	17	0
Pensylvania, - -	15761	10	0
South-Carolina, -	6971	1	11
Sterling, £.	49395	16	10

Suppose now the rest of the colonies, to be no more than able to double this sum ;

The sum-total that the colonies will be able to raise ; according to their old tax-lists ; and their own mode of valuation and of rating the produce of estates, real and personal ; will be, at one shilling in the pound on the produce, *per annum* - - -

98791 13 8

In justice to the rest of the provinces, particularized above, I ought to observe that, by the equallest judgment which I can form, I think that the province of South-Carolina is the most under-rated.

I should also point out to the American reader, that, as the calculations and lists above referred to, are taken from the private collections

collections of the writer of these papers, without any official communication of such papers as ministry may be possessed of, I desire him to give no other credit to them, than such as, by referring to his own knowledge of the state of things in the Colonies, he finds to be just and near the truth. I should, on the other hand, inform the English reader, that these were collected on the spot; and communicated by persons leading, and thoroughly conversant in the business of their respective provinces.

Another remark is necessary; That, except what relates to Pennsylvania, these collections were made nine years ago; so that, wherever any difference may arise, from the different proportion in which these provinces have encreased, that ought to be carried to account; at the same time, that a certain addition may be made to the whole, from the certain encrease of all of them.

If this moderate tax, raised by the above moderate valuation, be compared with the internal annual charge of government in the respective provinces; that charge will be found much below the supplies of this fund. The whole charge of the ordinary expence of government in the province of Massachusetts-Bay; which does, (by much,) more to

the support of government, and other public services than any other province ; is, in time of peace, sterling 12937*l.* 10*s.* — whereas that of New-York, is not more than about, sterling, 4000*l.* annually.

When these points shall be settled ; there cannot be a doubt, but that the same zealous attention ; which all parties see and confess to be applied, in the administration of the British department to the public revenue ; will be applied to the establishing and reforming that of America.

A proper knowledge of, and real attention to, the Crown's quit-rents in America ; (by revising the *original defects*, by remedying the almost insurmountable difficulties that the due collection of them is attended with,) may render that branch a real and effective revenue : which at the same time will be found to be no inconsiderable one.

By proper regulations for securing the Crown's rights in waifs and wrecks, in fines and forfeitures ; and by proper appropriations of the same ; that branch of revenue may be made effective : But, whenever it is taken up in earnest ; whenever it shall be resolved upon to give a real official regard to the revenue in America ; the office of *Auditor General*

neral of the Plantations must cease to be a mere sinecure benefice; and be really and effectively established with such powers as will carry the duty of it into execution; yet under such cautions and restrictions, as shall secure the benefit of its service to the use of the crown.

If it should be thought difficult and hazardous, to extend the legislative rights, privileges and preeminences (the true Imperium of government,) to wheresoever the dominions of the state extend,—the administration must be content to go on in this ptolomaic system of policy, as long as the various centers and systems shall preserve their due order and subordination: Or to speak in a more apposite idea—if we would keep the basis of this realm confined to this island; while we extend the superstructure, by extending our dominions; we shall invert the pyramid (as Sir William Temple expresses it); and must in time subvert the government itself—If we chuse to follow the example of the Romans towards their Provinces—we must expect to follow their fate.

Would statesmen, on the other hand, doubt for a while, the predetermined modes which artificial systems prescribe; would they dare to look for truth in the nature of
M 3 things;

things ; they would soon adopt what is right, as founded upon fact. — They would be naturally led into the true system of government, by following *with the powers of the state*, wherever the actual and *real powers of the system of things* lead. They would see, by the various and mutual interconnections of the different parts of the British dominions, throughout the Atlantic, and in America ; by the intercommunion and reciprocation of their alternate wants and supplies ; by the combination and subordination of their several interests and powers ; by the circulation of their commerce, revolving in an orbit which hath Great Britain for its center,—that there does exist, *in fact, in nature*, a real union and incorporation of all these parts of the British dominions—*an actual system of dominion*. This system of dominion, thus existing in nature, wants only to be adopted into the system of our politics : It would then act, and be actuated by, the real spirit in which it moves and has its being : By that spirit, which is the genuine spirit of the British constitution : By that spirit from which the British government hath arisen to what it is : By the spirit of extending the basis of its representative legislature, through all the parts, to which the rights, interests or power of its dominions extend : so as to form (I cannot too often inculcate the idea) A GRAND

MARINE

MARINE DOMINION, CONSISTING OF OUR POSSESSIONS IN THE ATLANTIC, AND IN AMERICA, UNITED INTO A ONE EMPIRE, IN A ONE CENTER, WHERE THE SEAT OF GOVERNMENT IS.

This measure has been, and I dare say will be generally treated, as impracticable and visionary. I wish those declarations of power, with which we mock ourselves, may not be found the more dangerous delusion*. Such is the actual state of the really existing system of our dominions; that neither the power of government, over these various parts, can long continue under the present mode of administration; nor the great interest of commerce extended throughout the whole, long subsist under the present system of the laws of trade: *Power, when used towards them, becoming self-destructive, will only hasten the general ruin.*

To this measure, not only the Briton but the American also *now* objects, that it is unnecessary, inexpedient and dangerous: But let us consider their several objections.

* On repealing the stamp-act; an act pass'd, declaring the power of parliament to bind these Colonies in all cases whatsoever: This, however, was only planting a barren tree, that cast a *shade* indeed over the Colonies, but yielded *no fruit*. Pennsylvania Farmer's Letters, Letter 10th.

The Briton says that such measure is unnecessary, because the power of parliament extends to all cases and purposes required.— Be it allowed, that this power does, in right and theory, thus extend: Yet surely the reasoning, the precedents, the examples, and the practice of administrations do show, that something more is necessary in this case.

The American says it is unnecessary, because they have legislatures of their own, which answer all their purposes.— But each Colony having duties, actions, relations, which extend beyond the bounds and jurisdiction of their respective communities; beyond the power of their respective governments; the colonial legislature does certainly not answer all purposes; is incompetent and inadequate to many purposes: Something therefore more is necessary; *either a common union amongst themselves*; or a one common union of subordination, under the one general legislature of the state.

The Briton says that it would be inexpedient to participate with, and communicate to the Colonists; the rights and privileges of a subject living and holding his property within the realm: to give these rights to people living out of the realm, and remote
from

from it ; whose interests are rival and contrary, both in trade and dominion, to those of this realm : but the scheme of giving representatives to the Colonies ; annexes them to, and incorporates them with the realm. The fair answer to this is—that their interest is contrary to that of Great Britain ; only so long, as they are continued in the *unnatural artificial* state, of being considered *as external provinces* : and they can become rivals, only by continuing to increase in this separate state : But their being united to the realm ; is the very remedy proposed.

The American says, that this measure is inexpedient : because, if the Colonies be united to the realm ; and have participation in the legislature, and communication of the rights and privileges of a subject within the realm ; they must be associated in the burden of the taxes ; and so pay a share of the interest and principal of the national debts, which they have no concern in.—This is literally the objection which was made by the Scots, at the proposal of the union of the two kingdoms : and came indeed with reason and propriety, from an independent sovereign kingdom, which had no concern in the debts of England. But the like objection can never be made with propriety, reason or justice, by Colonies and provinces
which

which are constituent parts of a trading nation, protected by the British marine—Much less can it be said, that they have no concern in these debts ; when they are debts contracted, by wars entered into, the first for the preservation of the protestant interest, and independency of the sovereignty of the mother country ; the two latter, solely in defence, and for the protection of the trade and actual existence of the Colonies. However ; if the Colonies could, on any reasonable grounds of equity or policy, show any inequality, or even inexpediency, in their paying any part of the taxes, which have a retrospect to times before they were admitted to a share in the legislature—there is no doubt but that the same moderation and justice which the kingdom of England showed towards Scotland, in giving that *an equivalent* ; would be extended to the Colonies, by the kingdom of Great Britain : And I cannot but think that it would not be *more* than such equivalent, that the government should grant them a sum of money sufficient to pay off all their debts which were contracted in consequence of the last war, and were still out-standing ; unless Great Britain engaged from henceforth to consider these as the debts of the state in general, I also cannot but think that it would not be *more than such equivalent*, that the
crown

crown should give up all its right to *quit rents* ; and that every act, whereby any special revenue was raised upon the Colonies, should be repealed.

The Briton says, that this measure would be *dangerous* ; as it might prove a leading step, to the finally removing of the seat of Empire to America.—To which the true answer is, that the removing of the seat of the Empire to America or not, depends on the progressive encrease of the territories, trade and power of the American Colonies ; if continued in the same unnatural, separate, rival, and dangerous state, in which they are at present.—That this is an event not to be avoided.—But this measure of uniting the Colonies to the realm, and of fixing the legislature here in Britain ; is the only policy that can obviate and prevent this removal : For, by concentrating the interest and power of the several parts, in this island ; the Empire must be fixed here also.—But if this removal cannot finally be prevented—is it better that a new Empire should arise in America, on the ruins of Great Britain ; or that the regalia of the British Empire, extending to America ; should be removed only to some other part of the dominions, continuing however in the same realm thus extended ?

The

The American says, that this measure might be dangerous to their liberties ; as this calling the American representatives to a parliament, sitting in Great Britain, would remove their representatives at too great a distance from their constituents, for too long a time ; and consequently from that communication and influence, which their constituents should have with them : and therefore transfer the will of the Colonies out of their own power ; involving it, at the same time, in a majority, against which their proportion of representatives would hold no ballance. This objection, if it hath any ground for its fears, is a direct answer to the British objection last mentioned :—But it proves too much ; as, according to this argument, no remote parts of a state, ought to send representatives, as the seat of Empire is also remote : The truth and fact is, that the mutual situation of Great Britain and America, very well allows every communication, which a member of parliament ought to have with his constituents : and any influence beyond that, is unparliamentary and unconstitutional.

As to all objections which arise from apprehensions of what effect such an additional number of members, acceding all at once to the House of Commons, might have on the

the politics, conduct and internal management of that body — they arise from an unwarranted and (one should hope) groundless suspicion, of some undue influence operating there.—But should this be a supposition, that could ever be admitted to be true, even amongst the *faeces Romuli*; the contrary apprehensions, from the different quarters, are such as mutually destroy each other.—The Americans fear, that the number of representatives which will be allowed to them, will have no power, proportionable to their share of interest in the community: That this union to the British legislature, will only involve them in the conclusions of a majority, which will thence claim a right to tax them; and to restrain their trade, manufactures and settlements as they please. The Briton fears, that these representatives may be an united phalanx, firmly opposing every tax proposed to be laid upon the Colonies; and every regulation meant to keep their actions and interest in due subordination to the whole.—That they will be a party, a faction, a flying squadron, alway ready, and in most cases capable, (by uniting with opposition to administration, or with commercial factions,) to distress government, and the landed interest of the kingdom. The Americans again on the other hand, fear that some future British ministry,

ministry, in some future days of corruption, will succeed in bribing their representatives; against which the Colonies will have no remedy, but must submit to the betraying consequences.—These are objections which, on the very supposition, mutually counteract and destroy one another.—They are objections which have had fair trial upon experience, in the case of the Scots members—and are directly contradicted by truth and fact.

As to all objections raised on the supposed impracticability of the measure; they are too contemptible to deserve an answer.—There is but one which hath any sense in it—it is said, that the Colonies are too remote, upon a dissolution, to receive the writs, and return their representatives within the time limited by law; and that, if the parliament should be assembled immediately on its election; the Colonies could not have their representatives in the house, for some time. The portion of time limited by law, is fixed in proportion to the distance of the remotest parts concerned at present, to send members to parliament—A special time might be fixed by law, in proportion to the special case of the distance of the Colonies—And as to the supposed difficulty of their having their representatives in a new parliament, upon its being assembled immediately: I
 7 say,

say, that in the same manner, as upon the demise of the King, the parliament, then sitting, is by law, to continue six months, unless dissolved by the successor: so the old representatives of the Colonies, might by law, be permitted to sit in the new parliament, (if assembled within six months) until they were re-elected, or others sent in their room: the doing of which, might be limited to six months.

Notwithstanding, I know that this proposal will be considered as utopian, visionary, idle, impertinent and what not:—I will proceed to consider the justice and policy of this measure as it leads to this unavoidable consequence; that in the course and procedure of our government, there must arise a duty in government to give—a right in the Colonies to claim—a share in the legislature of Great Britain: or to have a separate one of their own.

While we consider the realm; the government of Great Britain, as the *Sovereign*; and the Colonies as the subject; without full participation in the constitution; without participation in the legislature; bound implicitly to obey the orders of government; and implicitly to *enact or register* as an act of their own, those grants which we have by
our

our acts required them to make, as a tax imposed on them; they say that their obedience in this case, (without the interposition of their own free-will,) is reduced to the lowest predicament of subjection: wherein they are not only required to *act*, but to *will*, as they are ordered: yet, however too strongly they may be supposed to state their case, surely there is a species of injustice in it.

* Supplies granted in parliament, are of good will, not of duty: the free and voluntary act of the giver; not obligations and services which the giver cannot, by right, refuse — Whatever therefore, is given out of the lands and property of the Colonies, should some way or other, be made their own act. This argument goes only to aids and subsidies, not to services; the latter are, and always were, of duty.

The true grounds of justice whereby the parliament grants supplies by aids and subsidies, and raises them by taxes on the lands and property of themselves and their constituents, is, that they give what is their own: that they lay no tax, which does not affect themselves and their constituents: and

* Vide Rolls of Parliament, 13 Henry IV. tit. 10.

are therefore not only the proper givers, but also, the best and safest judges, what burdens they are best able to bear: They do not give and grant from the property of others, to ease themselves. Let the statesman apply this reasoning to the case of the Colonies; and he may be led up to the true sources of the discontents, against the government of the mother country' which divert its effect; which undermine its establishment; and tend to its utter dissolution.

Whereas on the other hand, we shall find, (as hath ever been found,) that universal participation of council, creates reciprocity of universal obedience. The seat of government will be well informed of the state and condition of the remote and extreme parts: And the extreme and remote parts, by participation in the legislature, will, from self-consciousness, be informed of, and satisfied in, the reasons and necessity of the measures of government. These parts will consider themselves as acting in every grant which is made, and in every tax which is imposed. This consideration alone, will give efficiency to government: and will create that *consensus obedientium*, on which only, the permanent power of the Imperium of a state can be founded: This will give

extension and stability of Empire, as far as we can extend our dominions.

I could here proceed to justify this proposition, as founded in fact ; by showing, that *this principle of establishing the Imperium of government, on the basis of a representative legislature*, hath been, from the earliest and * first instance of the establishment of a BRITISH SENATE, (under the government of Carausius,) founded on its native and natural basis, a marine dominion ; invariably, through all times, *the spirit of this country* : The spirit of that constitution, by which government hath been alway the most surely and happily established in the British dominions. It is a native plant of this soil, which, although at various times, it hath been trodden and cut down, almost to the very roots ; hath alway again broken forth, with a vigour superior to all false culture, and all force. Although it was suppressed for a while, under the last despairing efforts of the Roman corrupted state ; yet having taken root, it revived : Although it was, in part, oppressed by the feudal system, in the latter times of the Saxons, as well as under the Normans ; yet I could here show, not only how, by its native vigour, it rose again

* Anno Dom. 291.

from

from ruin ; but also mark the progress of its restoration, to the time of Henry the third.

But these are arguments only to those who feel their hearts united to this spirit ; who revere the institutions of their ancestors, as the true sources of the original liberty, and political happiness of this country. In these days, when it is the wisdom of statesmen to raise objections to this spirit of policy ; when the learned fortify their understanding against conviction of the right of it ; when the love of liberty, nay, the very mention of such a feeling, is become ridiculous ; such arguments must of course become ridiculous also.

It would be a melancholy, and but an useless consideration, to look back to that state of political liberty, on which the British Empire hath extended itself : or to look forward to that state of political glory, liberty and happiness, on which it might be extended and established. When we find bounds set to the principle of this spirit ; thus far shalt thou extend and no further ; when we see a system of policy adopted, under which this country must continue for a while, entangled in a series of hostile disputes with its Colonies, but must at length

lose them—must be finally broken in its commercial interest and power; and sink by the same pride, and same errors, into the same insignificance and dependence, as all other commercial states have done, one after another—one has only left to *hope*, that the ruin is not inevitable, and that heaven may avert it.

I decus : I nostrum : melioribus utere
fatis.

Let us here close this view, and let us return to the examination of matters, which form the internal administration of the Colonies. And first their money.

C H A P. VI.

General principles of Money applied to that subject, as it operates in the Colonies, both in coin and in paper.

S E C T I O N I.

TH E British American Colonies have not, within themselves, the means of making money or coin. They cannot acquire

quire it from Great Britain ; the balance of trade being against them. The returns of those branches of commerce, in which they are permitted to trade to any other part of Europe, are but barely sufficient to pay this balance.—By the present act of navigation, they are prohibited from trading with the Colonies of any other nations : so that there remains nothing but a small branch of African trade, and the scrambling profits of an undescribed traffic, to supply them with silver. However, matters have been so managed, that the general currency of the Colonies, used to be in *Spanish* and *Portuguese* coin. This supplied the internal circulation of their home business, and always finally came to England, in payments for what the Colonists exported from hence. If the act of navigation should be carried into such rigorous execution, as to cut off this supply of a silver currency to the Colonies ; the thoughts of administration should be turned to the devising some means, of supplying the Colonies with money of some sort or other : and in this view, it may not be improper to take up here, the consideration of some general principles, on which the business of money and a currency depends.

SILVER, by the general consent of mankind,
N 3 has

has become a DEPOSITE, which is THE COMMON MEASURE of commerce—This is a general effect of some general cause. The experience of its degree of scarceness compared with its common introduction amidst men; together with the facility of its being known by its visible and palpable properties; hath given this effect: Its degree of scarceness, hath given it a value proportioned to the making it a DEPOSITE; and the certain quantity in which this is mixed with the possessions and transactions of man, together with the facility of its being known; makes it a COMMON MEASURE amongst those things. There are perhaps other things which might be better applied to commerce, as a common measure; and there are perhaps other things which might better answer as a depofite: But there is nothing except silver, known and acknowledged by the general experience of mankind; which is a depofite, and common measure of commerce. Paper, leather, or parchment, may, by the sanction of government, become a common measure, to an extent beyond what silver could reach: yet all the sanction and power of government, never will make it an *adequate* depofite. Diamonds, pearls, or other jewels, may in many cases be considered as a more apt and suitable depofite; and may be applied as such, to an extent to which silver will not reach; yet

yet their scarcity tends to throw them into a monopoly; they cannot be subdivided, nor amassed into one concrete: and the knowledge of them, is more calculated for a mystery or trade, than for the forensic uses of man in common: and they will never therefore become *a common measure*.

The quantity of this depofite; and the general application of it to feveral different commodities, in different places and circumftances; creates a compound proportion between it and other objects with which it ftands compared; and from this proportion forms *its own fcale*. This fcale arifes from the effect of natural operations, and not from *artificial impofition*: — If therefore filver was never ufed but by the merchant, as the general measure of his commerce and exchange; coin would be (as it is in fuch cafe) of no ufe: it would be confidered as bullion only. Although bullion is thus fufficient for the measure of general commerce; yet for the daily ufes of the market fomething more is wanted in the detail; fomething is wanted, to mark to common judgment its proportion, and to give the fcale: Government therefore, here interpoſes; and by forming it into COIN, *gives the fcale*; and makes it become to forensic ufe AN INSTRUMENT in detail, as

well as it is in bullion a MEASURE in general.

This *artificial marking* of this scale on a *natural measure*; is neither more nor less than marking on any other rule or measure, the graduate proportions of it: And this artificial marking of the scale, or graduating the measure, is of no use but in detail, and extends not beyond the market — for exchange restores it again in commerce: No artificial standard therefore can be imposed.

Having this idea of money and coin; I could never comprehend to what general uses, or to what purposes of government, the proclamation which Queen Ann issued, and which was confirmed by statute in the sixth year of her reign, could be supposed to extend; while it endeavoured to rate the foreign coins, current in the Colonies, by an artificial standard. It would seem to me just as wise, and answering to just as good purpose; if government should now issue a proclamation, directing, that for the future, all black horses in the Colonies should be called white, and all brindled cows called red. The making even a law to alter the names of things, will never alter the nature of those things; and will never have any other effect, than that of introducing confusion,

fusion, and of giving an opportunity to bad men of profiting by that confusion.

The safest and wisest measure which government can take ; is not to discourage or obstruct that channel through which silver flows into the Colonies — nor to interfere with that value which it acquires there— On the contrary, I must ever wish to see the Spanish silver flowing into our Colonies with an ample and uninterrupted stream. — That stream, after it hath watered and supplied the regions which it passeth through, must, like every other stream, pay its tribute to its mother ocean : This silver (to speak without a metaphor) after it hath passed through the various uses of it in the Colonies, doth always come to and center finally in Great Britain.—All therefore that is required of those who attempt to conduct the administration of American affairs, and all that they should do is—so to regulate the Colony trade, that that silver shall finally come to, and center in Great Britain ; whither it will most certainly come in its true value.—But if through any fatality in things or measures, a medium of trade, a currency of money, should grow defective in the Colonies ; the wisdom of government will then interpose, either to remedy the cause which occasions such defect, or to contrive the means of supplying the

the deficiency. The remedy lies in a certain address in carrying into execution the act of navigation—but if that remedy is neglected; the next recourse must lie in some means of maintaining a currency specially appropriated to the Colonies; and must be partly, such as will keep a certain quantity of silver coin in circulation there—and partly, such as shall establish a *paper currency*, holding a value nearly equal to silver.

On the first view of these resources, it will be matter of serious consideration, whether government should establish a mint and coinage, specially appropriated for the use of the Colonies; and on what basis this should be established. If it be necessary that silver, which in bullion is a common measure of general commerce, should, (that it may be instrumental also to the common uses of the market,) be formed into coin; it should be so formed; that while it was the duty of the public to *form* this coin, it may not be the interest of the individual to melt it down again into bullion.

If a certain quantity of coin is necessary for the forensic uses of the Colonies; it should be so formed, as *in no ordinary course* of business, to become the interest of the merchant *to export it from thence*.

This

This coin should be graduated by alloy, somewhat below the real scale; so as to bear a value in tale, somewhat better than the silver it contains would fetch, after the expence of melting down the coin into bullion—somewhat better *as an instrument*, in common forensic use; than the merchant *in ordinary cases* could make of it, in applying it *as a measure* by exporting it.

I have here inserted the caution against ordinary cases only; as I am not unaware, that the lowering the intrinsic worth of the coin for America, will have in the end no other effect, than to raise the price of the European goods carried thither; while the coin will be exported to Great Britain, the same as if it were pure silver.

If such a necessity of an artificial currency should ever exist in the Colonies; and if such a coinage was established; the Colonists would, for the purposes of their forensic business, purchase *this instrument* either in gold or silver; in the same manner as they do now purchase copper coin for the same purposes.

There are two ideas of *a paper currency*. The one adopts a measure for establishing a bank in the Colonies, which is quite a new
and

and untried measure; the other turns the view to the regulating the present paper money currency, which the Colonies have had experience of in all its deviations; and to the establishing the same on a sure and sufficient basis.

I have seen this plan for a *provincial bank*: and think it justice to the very knowing person who formed it, to say; that it must be because I do not understand it, that many objections arise in my mind to it. Whenever he shall think fit to produce it; it will, I dare say, come forth, clear of all objections, with that force of conviction, with which truth always flows from a mind in full and perfect possession of it.

In the mean while; I will recommend to the consideration of those who take a lead in business, a measure devised and administered by an American assembly.—And I will venture to say, that there never was a wiser or a better measure; never one better calculated to serve the uses of an encreasing country; that there never was a measure more steadily pursued, or more faithfully executed, for forty years together; than the loan-office in Pennsylvania, formed and administered by the assembly of that province.

While the interest becomes a revenue, that
An

An encreasing country of settlers and traders must alway have the balance of trade against them, for this very reason, because they are encreasing and improving ; because they must be continually wanting further supplies, which their present circumstances will neither furnish nor pay for : — And for this very reason also, they must alway labour under a *decreasing* silver currency, though their circumstances require an *encreasing* one. In the common cursory view of things, our politicians, both theorists and practitioners, are apt to think, that a country which has the balance of trade against it, and is continually drained of its silver currency, must be in a declining state ; but here we may see, that the progressive improvements of a commercial country of settlers, must necessarily have the balance of trade against them, and a decreasing silver currency ; that their continual want of money, and other materials to carry on their trade and business, must engage them in debt——But that those very things applied to their improvements, will in return not only pay those debts ; but create also a surplus, to be still carried forward to further and further improvements. In a country under such circumstances, money lent upon interest to settlers, creates money. Paper money thus lent upon interest, will create gold and silver in principal ; *while the interest becomes a revenue, that*
pays

pays the charges of government. This currency, is the true Pactolian stream, which converts all into gold that is washed by it. It is on this principle that the wisdom and virtue of the assembly of Pensylvania, established, under the sanction of government, an office for the emission of paper money by loan.

A plan of a general paper currency for America, which was intended to have been inserted in the first edition of this work; hath been withheld from publication now four years, for reasons, which I was in hopes, might have led to more public benefit, than the making it public *in this work* could do *. I have inserted it in this edition—but first—I proceed to the consideration of the ordinary mode of making paper-money, by the legislatures of the Colonies issuing government-notes, payable at a certain period by a tax.—It may be useful to give some description of this; and to point out such regulations, as will become necessary in this case, should the other not be adopted.

This paper-money consists of promissory notes, issued by the authority of the legislature of each province; deriving its value, from being payable at a certain period, by

monies arising from a tax proportioned to that payment at the time fixed. These notes pass as lawful money; and have been hitherto a legal tender, in each respective province where they are issued.

As any limitation of the uses of these notes as a currency, must proportionably decrease its value; as any insecurity, insufficiency, or uncertainty in the FUND which is to pay off these notes, must decrease their value; as any QUANTITY emitted more than the necessities of such province calls for as a medium, must also decrease the value of that *medium* or currency—it is a direct and palpable injustice, that *that* medium or currency which has depreciated by any of these means from its real *value*, should continue a *legal tender at its nominal value*.

The outrageous abuses practised by some of those legislatures who have dealt in the manufacture of this depreciating currency; and the great injury which the merchant and fair dealer have suffered by this fraudulent medium; occasioned the interposition of parliament to become necessary:—Parliament very properly interposed, by applying the only adequate and efficient remedy; namely, by prohibiting these Colony legislatures, from being able to make the paper currency,

currency, *a legal tender*: And government has lately, for the same prudent reasons, made this prohibition general to the whole of the Colonies. For, *when this paper-money cannot be forced in payment as a legal tender*; this very circumstance will oblige that legislature which creates it, to form it of such internal right constitution, as shall force its own way by its own intrinsic worth on a level nearly equal to silver.—The legislature must so frame and regulate it, as to give it *a real value*.

These regulations all turn upon *the sufficiency and certainty of the FUND*; *the extent of the USES*; and the proportioning the QUANTITY to the actual and real necessities which require such a medium.

The FUND should at least be equal to the payment of the principal, *in a limited time*: and that time, should be certainly so fixed, as that the legislature itself could not alter it, otherwise the Paper Currency must lose one of the essential properties of money, namely that of being a DEPOSITE. Where the paper currency is treasurer's notes given for specie actually lent to government; the fund whereon it is borrowed should be also capable of paying, *ad interim*, a certain interest; as is the case of treasurer's notes in the province of Massachusetts-Bay.

This

This medium ought to be applicable to all the equitable as well as legal uses of silver money within the Colony or province, except that of being *a legal tender*.

The QUANTITY ought always to be proportioned to the necessity of the medium wanted; which (the *fund and uses* being fairly and absolutely fixed) may always be judged of by the rise or fall of the *value* in its general currency or exchange: for where the quantity issued is more than necessity requires, the value will depreciate: and where the fund is good, and all proper uses of the medium secured; so long as no more paper is issued than necessity does require, it will always hold a value near to, though somewhat less than silver. On this subject I here refer the reader to a very judicious tract *, written and given to me, several years ago, by *Tench Francis*, Esq; late attorney-general of the province of Pennsylvania; conversant in these matters, both as a lawyer and a merchant. I now print and publish it by leave of a near † relation, and subjoin it as containing the most exact and decisive sentiments on this subject, that I have any where

* Vide Appendix, No. XII.

† Dr. Philip Francis, his brother.

met with. I entitle it, CONSIDERATIONS
ON A PAPER-CURRENCY.

In Colonies, the essence of whose nature requires a progressive increase of settlements and trade, and yet who from the balance of trade with the mother country, being against them, must suffer a constantly decreasing quantity of silver money; *a certain quantity of paper-money*, is necessary. It is necessary, to keep up the increasing operations of this trade, and these settlements: it is also necessary, in such circumstances, to the equal distribution and general application of these benefits to the whole Colony: which benefits would otherwise become a monopoly to the *monied merchant only*: it is prudent, and of good policy in the mother country to permit it, as it is the surest means of drawing the balance of the Colony trade and culture, to its own profit.

These reasonings further shew, how, by securing the *fund*, extending the *uses*, and regulating the *quantity*; this measure of a paper-currency, may be carried to the utmost extent of which it is capable. Nor do they stop here—for as they give the rule whereby to judge of the excess or defect of money in any place whatsoever; so do they, at all times,

times, shew the necessity of increasing that paper currency; or the contrary.

Although the reasonings, which from my own sentiments of the matter, I have applied to this subject; and those, with which I am able to oblige the world, by publishing the very judicious and able tract above referred to, do perfectly coincide in these points; yet upon the point of the USES, (in considering the remedies to be provided against the quantity of any fallacious depreciation of this paper-money) our reasonings seem to divide on quite different sides of the question. The author of the above tract asserts, that in Colonies, where paper-money is created; the people of that Colony *should be compelled by law, to receive it in payments*: and he states two or three different cases in proof of his assertion: My opinion suggests, that this paper-money ought *by no means to be a legal tender*: and yet, different as these propositions may appear, they will be found to coincide in the application of the remedy; in the only proper and radical remedy, *the not permitting the paper-money to be a legal tender*. This gentleman experienced in the politicks of the Colonies, and knowing the danger, if not the impracticability, of any legislature in these Colonies adopting this maxim, takes up the reasonableness and necessity, of this paper-

money being forced into payments by law— but then, in all the cases wherein he states the *remedy in equity*, against the *injustice* which may arise from the artificial value of this paper-money, thus declared; he firmly and justly evinces, that the payment thus by law forced upon the creditor *in paper*, ought not to be according to the nominal legal value of that paper, but according to the real value, *an equivalent to the debt*. This judgment totally destroys the maxim of its being a legal tender. In the application therefore of the remedy, our opinions do not differ, but the truth of them becomes the more elucidated, by this coincidence of two thus seemingly different propositions.—I will therefore proceed in saying, that by the reasonings above, it appears; that the only, and the proper remedy, against the iniquities of a fallacious, depreciating paper-currency, is *that radical one, of not permitting this paper-money to be a legal tender*—On the other hand, so confirmed am I in my opinion of the necessity and propriety of a certain quantity of paper-money in the Colonies; that were I not convinced, that the restraining of it from being a legal tender, will not destroy the existence of it, but, on the contrary, amend its currency; I would even sacrifice my conviction to this point of utility: but whatever apparent value this paper-money may

may seem at first view to lose, by restraint of this one use ; this very restraint, (if the Colonies will have paper-money) must become an occasion of so meliorating and securing the *fund* ; of so exactly regulating *the quantity* ; and of adding some *other valuable use*, namely an interest, or some premium equivalent to it ; that the paper-money shall become thus intrinsically, and of its own nature, a better and surer currency, than all the power and authority of Colony-government could make it. For not being forced into currency, by any external value derived from authority ; it must, like bullion in coin, derive its currency from its intrinsic value and applicableness to the purposes of money—so that thus becoming, from necessity, a more determinate measure, a more practical instrument of trade, and a more beneficial deposite ; as bearing an interest even while in currency ; it becomes to have *all the uses* of bullion in coin, and one more—so as even to bear a premium—which in fact is the case of the treasurer's notes in the province of the Massachusetts-Bay in New England ; though they are not a legal tender.

SECTION II.

A Plan proposed for a general Paper Currency for America, to be established by the British Government.

AS the inconvenience of permitting the assemblies of the Colonies to issue paper money, under the sanction of its being a legal tender, had been complained of and confessed; an act of parliament was made, to restrain that part of the Colonies, against which the complaint chiefly lay. Since the writing of the above, a general restraint hath been lain upon all the Colonies; by a like act of parliament, extending to the whole. The majority of the men of business and property in the Colonies, have ever heretofore wished to have the assemblies restrained by act of parliament, from the power of giving the sanction of a legal tender to their paper-money: They esteemed that restraint to be the only effectual means of preventing the many bad practices, which have arisen from this illusory false coin, to the detriment of real business, and real property. On the other hand, seeing the absolute necessity of some paper currency; schemes of the like nature, as that of the following proposal,

propofal, have been thought of. I have had opportunities (not with governors and crown-officers, but with the leading men of bufinefs in the Colonies) of examining and confidering feveral of thefe fchemes. The following propofal may be confidered as the result of thefe difcuffions ; containing and comprehending, according to my beft judgment, all which was thought confiftent with the liberties of the people ; fafe in refpect of their intereft ; and effectual to the point required. So far am I from affuming any merit in the invention or framing of it ; that I defire it may be confidered, as founded on what hath been actually practifed in Penfylvania, by the good fenfe and good policy of the affembly of that province, with fuccefs, and with benefit to the public : and that the particular propofal, as it is now formed, and applied to the prefent exigences of America and Great Britain ; was drawn up fome years ago, in conjunction with a friend of mine and of the Colonies—It was, by us, jointly propofed to government, under fucceffive adminiftrations, in the years 1764, 1765, 1766 ; during which time, the publication was fufpended. It is now given to the publick ; not by way of appeal againft adminiftrations, but as a fcheme which, although not attended to by a Britifh miniftry at prefent, may yet fuggelt something that

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may

may be of use to better politicians than we pretend to be.

We are fully apprised how much we have risked, both in the proposing, and in the now publishing this scheme.—If the British statesmen should still think that they can turn it to no good; and if the American patriots should think that a dangerous use might be made of it by government; we shall be thought by the one to have been impertinent, and by the others to be mischievous meddlers. If our statesmen should have the happiness to find out the right use of it; and, like the humbler, but not less wise politicians in the Colonies, to apply it to the mutual benefit of government, and of the people; then we shall not be allowed to have the least share, much less any merit in the forming of it, or in the application of it: twenty different people will prove, that it has been their scheme. About this we are not anxious; any more than disappointed that our British statesmen could not find their way to the use of it. We now propose it to the sober sense and experience of the Colonies, who will know how to profit by it; how to convert this species of credit, into a real efficient currency; how to benefit *and to take the lead of that power and political interest*, which their taking the management

management of this, will necessarily throw into their hands. *We need not point out to them* how that will arise.—They have the means (whenever our bad policy, or their own prudence, shall lead them to make use of such) of giving this currency a general value throughout America, by establishing an intercommunion and reciprocation of credit, under acts passed by each particular assembly: all having reference to this one point;—regulating the quantity which each province or Colony shall issue, by the state of its depreciation; and regulating the proceedings in their several courts of law, as to the specialty of all bargains and contracts, made in this special note-money. They also will know, (which hath hitherto puzzled our statesman,) how to give it a *real intrinsic value*, without calling in the aid of the government of Great Britain, to give it an *artificial one*, by making it a legal tender; and without paying to that government, *forty thousand pounds per annum*; which sum, at least, the interest of this money would have produced as a revenue.

As the paper-money act made and passed in Pennsylvania, in 1739, was the compleatest of the kind; containing all the improvements which experience had from time to time suggested, in the execution of preceding

ding acts; an account of that act, will best explain and recommend the measure contained in the following proposal.

The sum of the notes, by that act directed to be printed was 80,000*l*. proclamation money: This money was to be emitted to the several borrowers, from a loan-office established for that purpose.

Five persons were nominated Trustees of the *loan-office*, under whose care and direction, the bills or notes were to be printed and emitted,

To suit the bills for a common currency, they were of small and various denominations, from 20 shillings downwards to one shilling.

Various precautions were taken, to prevent counterfeits, by peculiarities in the paper, character, manner of printing, signing, numbering, &c.

The trustees took an oath, and gave security for the due and faithful execution of their office.

They were to lend out the bills on real security of at least double the value, for a term

term of sixteen years ; to be repaid in yearly quotas or installments, with interest : Thus one 16th part of the principal was yearly paid back into the office ; which made the payment easy to the borrower : *The interest was applied to public services* ; the principal, during the first ten years, let out again to fresh borrowers.

The new borrowers, from year to year, were to have the money only for the remaining part of the term of 16 years ; repaying, by fewer, and of course, proportionably larger installments ; and during the last six years of the 16, the sums paid in, were not to be remitted, but the notes burnt and destroyed : so that at the end of the 16 years, the whole might be called in and burnt, and the accounts completely settled.

The trustees were taken from all the different counties of the province ; their residence in different parts, giving them better opportunities of being acquainted with the value and circumstances of estates offered in mortgage.

They were to continue but four years in office ; were to account annually to committees of assembly ; and, at the expiration of that term, they were to deliver up all monies

monies and securities in their hands, to their successors, before their bonds and securities could be discharged.

Lest a few wealthy persons should engross the money, which was intended for more general benefit, no one person, (whatever security he might offer) could borrow more than 100%.

Thus, numbers of poor new settlers were accommodated and assisted with money to carry on their settlements; to be repaid in easy portions yearly, as the yearly produce of their lands should enable them.

Great inconveniencies had arisen in other Colonies, from a depreciation of their paper money, occasioned by emitting it in too great quantities.

It was difficult to know beforehand, what quantity would be sufficient for a medium of exchange, proportioned to the trade of the country; and not to exceed the occasions.

To prevent the mischiefs attending an over quantity; the government of Pennsylvania began with a small sum of 15,000% in 1723: proceeded to increase it gradually, in

in following years ; and thus prudently *felt* for a proportion they could not previously *calculate* : and, as they never exceeded a moderate sum, the depreciation was never so great as to be attended with much inconvenience.

The advantages that arose from this act, were from a view thereof, in 1752, thus expressed, by a committee of assembly, in their report of August, 19th.

“ Furnishing the country with a medium
 “ of trade, and of a kind that could not, to
 “ any purpose, be exported ; as it facilitated
 “ mutual commerce, *lessened our taxes by*
 “ *the interest it produced* ; and made it more
 “ easy for every one to obtain ready pay for
 “ his labour, produce or goods, (a medium
 “ so evidently wanted at the time paper-
 “ money was first issued) has doubtless,
 “ been one great means of the subsequent
 “ increase of our trade and people, by in-
 “ ducing strangers to come and settle among
 “ us. But your committee conceive that
 “ the manner of issuing this medium, con-
 “ tributed no less to those happy effects,
 “ than the medium itself. It was by the
 “ law directed to be emitted on loans, in
 “ sums of 12*l.* 10*s.* and upwards, not ex-
 “ ceeding 100*l.* to one person for a long
 “ term,

“ term, on easy interest, and payable in
 “ yearly quotas; which put it in the power
 “ of many, to purchase lands and make
 “ plantations; (the loan-office enabling
 “ them to pay the purchase so easily;) and
 “ thereby to acquire estates to themselves,
 “ and to support, and bring up families;
 “ but who without that assistance, would
 “ probably have continued longer in a single
 “ state, and as labourers for others; or have
 “ quitted the Colony in search of better for-
 “ tune. This easy means of acquiring landed
 “ estates to themselves; has, we suppose,
 “ been one principal encouragement to the
 “ great removal hither of people from Ger-
 “ many; where they were only (and could
 “ scarce ever expect to be other than) ten-
 “ ants. That it should be easy for the in-
 “ dustrious poor to obtain lands, and acquire
 “ property in a country; may, indeed, be
 “ chargeable with one inconvenience; to
 “ wit, that it keeps up the price of labour,
 “ and makes it more difficult for the *old*
 “ *settler* to procure working hands; the
 “ labourers very soon setting up for them-
 “ selves; (and accordingly we find, that
 “ though perhaps not less than 30,000 la-
 “ bourers have been imported into this pro-
 “ vince, within these twenty years; labour
 “ continues as dear as ever;) yet this incon-
 “ venience is perhaps more than ballanced,
 “ by

“ by the rise and value of his lands, occa-
 “ sioned by increase of people : and to the
 “ public in general, numbers of substantial
 “ inhabitants, have been always reckoned an
 “ advantage. In fine, by rendering the
 “ means of purchasing land easy to the poor ;
 “ the dominions of the crown are strength-
 “ ened, and extended ; the proprietaries dis-
 “ pose of their wilderness territory ; the
 “ British nation secures the benefit of its
 “ manufactures ; and increases the demand
 “ for them ; for so long as land can be easily
 “ procured for settlements, between the *At-*
 “ *lantic and Pacific Oceans ; so long will la-*
 “ *bour continue to be dear in America :* and
 “ while labour continues dear, we can never
 “ rival the artificers, or interfere with the
 “ trade, of our mother country.”

But the act being expired, and the pro-
 prietors and the people differing about the
 terms of renewing it ; the former, (though
 they and their deputies had received annual
 presents out of the interest, amounting to
 near 40,000*l.* yet,) insisting on greater fu-
 ture advantages, which the assembly did not
 chuse to allow ; *this excellent machine for set-*
tling a new country, now no longer subsists.
 And as by the late act of parliament, no
 more paper-money can be issued in the Co-
 lonies, that shall be a *legal tender ;* it may
 perhaps

perhaps be necessary for government here to make some provision of a currency for the Colonies. If this should be necessary, the Pennsylvania scheme, which has by long experience, been found so practicable, and so useful ; may, with a few changes, to accommodate it more to general purposes, be safely and advantageously extended to all the Colonies, by an act of parliament as follows.

Let millions, in bills of credit (or paper-money) be printed here, for the use of the Colonies.

Let a loan-office be erected in each Colony, to issue the bills, take the securities, and to receive the quotas yearly paid in.

Let the bills be issued for ten years, payable a tenth part of the sum yearly with interest, at 5 *per cent*.

Let the bills be made by the act, a *legal tender* in all the Colonies, and the counterfeiting made death.—I desire to mark the very material difference of a paper currency created by act of parliament, and one issued by the Colonies, (as the necessities only of the Colonists have occasion for it;) from a paper currency poured like a deluge over a country,

country, by act of assembly only : In the one case, the mischief of its being a legal tender, has been severely felt, and therefore forbidden : In the other case, the making it a legal tender, is not only beneficial but necessary.

Let there be no limitation of the sums to be borrowed by one person, but that every one may borrow as much as he can give double security for, by a mortgage of real clear estate.

And to prevent an over quantity being extent at one time, let an interest of 4 *per cent.* be allowed, for all sums lodged in the office, during the time the owner suffers it to remain there. *By this means, it is supposed, the due proportion of money that shall be current, will find itself ;* and adapt itself from time to time, to the occasions of commerce.

The effects of this scheme would be, that although the silver and gold acquired by the Colonies, would be all sent to England ; yet they would have among them, in consequence of this measure, a legal tender.

They would also have a sufficiency of cash current for all purposes.

They would not have too much current at one time ; as the allowance for interest for sums lodged in the office, would always bring in the surplus.

The settlement and improvement of new tracts of land would be greatly encouraged and promoted, population encreased, trade extended, &c.

The means of remittance to England would be always at hand, and the commerce thereby facilitated.

A great annual sum, continually increasing, will arise to the crown for interest ; which, after deducting charges, may be applied to American purposes, in case of this kingdom ; and become *a permanent and effective revenue*. A considerable profit will also arise to government, from the wearing out, and total loss of a great deal of small money.

It will operate as a general tax on the Colonies, *and yet not actually be one* ; as he who *actually* pays the interest, *has an equivalent*, or more, in the use of the principal. But the tax, if it can be so called, will, in effect, spread itself more equally on all property ; perhaps more so than any other tax that can be

be invented ; since every one who has the money in his hands, does from the time he receives it to the time he pays it away, *virtually* pay the interest of it; the first borrower having received the value of it, (to use for his own profit), when he parted first with the original sum. Thus the rich, who handle most money, would in reality pay most of the tax.

These bills having thus *full* credit ; the government can issue, on occasion, any quantity for service, in case of an American war ; without needing to send *real cash thither, by hurtful contracts.*

Plenty of money thus continued in the Colonies, will keep labour high, and thereby prevent the apprehended danger of interfering manufactures.

For the more easy ascertaining of titles, there should be a clause in the act, requiring that all transfers, conveyances and incumbrances whatsoever should be recorded—this of itself would be a great benefit to the Colonies.

The manner of carrying this proposal into execution may be as follows.

An office to be established in London,

to be managed by two Commissioners, appointed by the treasury; their salaries *per annum*, with *per annum*, for clerks and incidents of office, to be paid out of the revenue only, arising from the interest.

The business of this office to be

1. The printing of the paper money.
2. The signing of it by the Commissioners.
3. The distribution of it to the offices in America.
4. The entering of what is sent, according to its number and denomination.
5. The communication and correspondence with the several loan-offices in the Colonies.
6. The drawing up the instructions for the same.
7. The receiving from these offices, accounts of the issuing the paper bills—these accounts to contain, 1. Account of the numbers and dates of bills issued. 2. State of the

the mortgages and securities. 3. Account of interest received. 4. Account of interest paid for deposited money. 5. Account of government drafts paid by the loan-office, and salaries paid to its several officers. 6. Account of bills exchanged, for those that are over-worn. 7. Account of receipts of principal money by instalments, &c.

And in general, the Commissioners from the monthly reports of the several offices in America, of every branch of their duty, are to form monthly abstracts and reports for the treasury, of the state of the money current; of the amount of the interest money in the loan-offices, at the government's disposal; of the state of each office; and the farther regulations from time to time necessary to be made, either by orders from the treasury, instructions from the Commissioners, or further legal powers, or directions by act of parliament; or by instructions necessary to be sent to the governors in America, recommending acts of assembly proper to be made in that country.

The Commissioners are also to draw up directions and instructions to the *Inspectors*, whose office will be hereafter described.

And they are to superintend all the other

parts of the administration and execution of this scheme, as will be more particularly pointed out hereafter, in the descriptions of the several offices and officers in America, with their respective duties.

Loan-Office in each province.

To consist of *Trustees, Solicitor, and Clerk*. The province to be divided into districts. A large province into eight districts, a small province into fewer.

Each district to have a Trustee appointed *out of its own resident inhabitants*, one who is a freeholder that can give sufficient security to the crown within the province. So that the loan-office of the largest province will consist of eight Trustees, and the smaller in proportion to their districts, into which they are divided, some not having more than two.

The Trustees to be appointed by act of assembly, and upon their appointment to qualify themselves, by giving the security required to the crown, and taking the usual oaths (or affirmation) and oath (or affirmation) of office.

Each Trustee to have 100*l.* *per annum*,
out

out of the interest arising by the loans of the bills.

The principal acting Trustee to reside in the capital of the province where the office is to be kept, and to have 200*l.* or less in some provinces, for his constant attendance, and the incidents of office, besides his salary in common with the rest.

The Trustees to be appointed, only for the term of five years, at the expiration whereof, they are to account fully to the governor in council, assisted by one of the inspectors hereafter described, and deliver up all books, deeds, deposited cash, &c. to their successors, upon which they are to receive their quietus.

All the Trustees are to meet once a month at the office, to sign the bills to be issued, to consider the applications for money, examine the goodness of the security offered, and fix the sum to be lent on each security; not less than a majority of the Trustees to order the loans, and not less than two to sign and date the bills to be issued. They are also to take charge of, and keep in some safe place, the security deeds mortgaged; and *they* are to chuse a person skilled in the law of titles, to

be their *Solicitor*, who is to be paid by the fees arising in the office, viz. 20s. on every mortgage; for which he is to examine, and make extracts of the titles or securities offered, for the inspection of the *Chief Justice* of the province, (if referred to him,) and of the Trustees; to prepare the mortgage and counterpart, with the bond and warrant of attorney, and to record the mortgage. He is also to keep a book of applications, noting them down in the order of time in which they are made, the sum desired, and the security offered in mortgage. He is to get blank mortgages printed, of a prescribed form. There are to be triplicates of each mortgage, the first is to be executed by the mortgager, and lodged in the office; the second, an exact copy delivered to the mortgager for his direction, as it contains the times and proportions of payments, both of installments and interest; the third to be kept in a bound book, and there made the record.

The clerk is also to be appointed by the Trustees. He keeps a book of allowances, so called, because therein is put down what sums the Trustees think proper to allow or lend to each applyer, according to their opinion of the security offered. He also computes

computes the quotas or installments and interest, making together the sum to be paid each year, by the mortgager; and gives a copy thereof to the Solicitor, to be by him, (after the approbation of the Trustees given to it,) inserted in the mortgage. He keeps also a day book, in which is noted,

The emissions and receipts of each day, viz.

The sums lent in mortgage, and to whom.

The sums received from each mortgager, distinguishing principal and interest.

The sums deposited in the office, for which 4 *per cent.* is to be allowed by the office.

The returning of such sums, with interest paid.

The sums of new bills exchanged for old.

The drafts of government for interest money, as paid by the Trustees.

The

The Trustees Salaries, when paid, and the allowance for incidents.

N. B. The person bringing any money bills to be deposited in the office, for the purpose of receiving the 4 *per cent.* is to prepare two schedules of said bills, one to be signed by the acting Trustee, and delivered to him; the other to be signed by him and delivered into the office, to be kept by the Trustees. And no sum under 100*l.* is to be deposited on the terms of receiving interest, and *the interest must not commence till one month after the deposit made.*

The clerk is to keep a ledger, in which the day book accounts are to be posted up, under their respective heads.

The Trustees, from these books, &c. are to form monthly abstracts of the whole state of the currency, and the business of the office, and to send the same signed by a majority of the whole number, to the commissioners' office in England, in order that the commissioners may form states from time to time, as the treasury shall require, of the whole of the currency throughout the continent, as well as of the state of each office in the respective Colonies.

Provision

Provision for check and control of the execution of the office in America.

1. The direction and instructions of the commissioners residing in England.

2. Two *Inspectors* to be commissioned by the treasury, to act under their instructions, and the instructions of the commissioners; and to report to them. They are to visit all the offices in America at least once a year, and to inspect the accounts, cash, &c. as often as they shall see occasion, or shall be directed by their superiors, and to join with the governor and council of each province in the auditing of the accounts of the office. And if, upon any of these inspections, an inspector shall discover any mismanagement which requires immediate remedy, he is not only to report to the commissioners in England, but to the governor of the province; and if it appears to the governor and council necessary, the governor to call together the assembly immediately, in order to the appointing new Trustees; and to order, by advice of council, the prosecution of the delinquent Trustees, to the forfeiture of their securities, and such other penalties as they may have incurred.

3. The

3. The governor and council (the inspector assisting) to audit the accounts of the loan-office within each province annually. The governor and council to be allowed for their trouble.

N. B. In those provinces where the governor is not appointed by the crown, perhaps some addition may be thought proper to be made to this board for auditing.

4. A committee of the assembly to inspect the state of the office, for their own satisfaction and information, that in case they discover any mismanagement or delinquency, they may apply to the governor, that proper steps may be taken to remedy the same.

When the accounts are to be inspected and settled, the Trustees will be charged with the loan money put into their hands, and discharge themselves by producing mortgages for the whole, or for part; and the remainder in bills.

They will be charged with the new bills put into their hands, to exchange such as by wearing are become unfit for farther currency, and discharge themselves by producing

ing such worn bills for part, and the remainder in new bills unexchanged.

They will be charged with the account of interest received; and discharge themselves by their salaries, by government draughts which they have paid, by interest they have paid on sums deposited, and by producing the remainder in bills in their hands.

They will be charged with the parts of the principal sums received yearly, as instalments; and discharge themselves by mortgages on which the same were remitted, and the remainder in bills.

They will be charged with the sums deposited in their hands, to bear interest; and discharge themselves by producing receipts for what they have returned, and for interest paid, and bills in their hands for the sums they have not returned.

C H A P. VII.

Administration of their Indian Affairs.

HAVING now gone through the consideration of every point of internal administration, let us next review those external relations by which the interests of the American settlements stand connected with the Indian country and its inhabitants. Our Colonies must necessarily have connections both of trade and politics with these people, of a nature different from any other; as they are planted in countries inhabited by a race of people, who differ in their circumstances and in their politics from any other nation, with whom there remains, either in history or on record, any example of alliance.

Perhaps it may not be unentertaining; I am sure it is necessary to the true knowledge of Indian affairs; to take up this subject, somewhat higher than has been usual in the ordinary way of considering it.

The different manner in which this globe of earth is possessed, and occupied by the different species of the human race which inhabit

habit it; must form the specific difference in their interests and politics.

The human race, which is at present found on this earth, may be precisely divided into three families; generically, and in their essential properties, distinct and different each from the other. And, for aught I know, it is to this natural truth, that the heaven-directed pen of the author of the books of Moses may refer, when he gives precisely, and only, three sons to Noah. These three different species, or race, are—The white race—the red—the black. It is not barely the colour of these two first, which distinguishes them; the form of their skull, and their hair, where there has been no mixture, is specifically different from each other; and a true Indian will not judge by any other distinction: the black race has wool instead of hair, as also a form of skull different from both the other two.

The holy books, after having given a philosophical account, cloathed in drama, of the origin of things, seem to confine their real narrative to the history of the white family, to that race of people who have been LAND-WORKERS from the beginning; who, wherever they have spread themselves over the face of this globe, have carried with them the art of

cultivating vines, and fruit trees—and the cultivation of bread corn: who, wherever they have extended themselves, have become *settlers*; and have constantly carried with them the sheep, goat, oxen and horse, domiciliated and specially applied to the uses and labour of a settlement.

Of the black family I say nothing in this place, as not concerned in the present consideration.

The red family, were originally, wherever found, and are yet in most parts, *Wanderers*. The Tartars are in one part wandering herdsmen, and in other parts hunters and fishermen. The American Inhabitants, (Indians, as we call them, from the word Anjô, or Ynguo, signifying a man in their language) are the same race of people from one end of the continent to the other; and are the same race or family as the Tartars; precisely of the same colour; of the same form of skull; of the same species of hair—not to mention the language and their names of rivers, mountains and other natural objects.

America, in its natural state, is one great forest of woods and lakes; stocked not with sheep, oxen, or horses; not with animals of labour, and such as may be domiciliated; but

but with wild beasts, game and fish ; vegetating, not with bread-corn, but with a species of pulse, which we call maize ; of which there is great doubt whether it be indigenous or not. — All therefore that this country afforded for food or raiment, must be hunted for. The inhabitants of consequence would naturally be, as in fact they were, *not land-workers, but hunters ; not settlers, but wanderers*. They would therefore, consequently, never have, as in fact they *never had, any idea of property in land* : of that property, which arises from a man's mixing his labour with it. They would consequently never have, as in fact they never had, any one communion of rights and actions as extended to society ; *they never had any one civil union* ; and consequently they could not ever have, *nor ever had any government*. They know no such thing as administrative or executive power, properly so called : * they allow the *authority of advice* ; (a kind of legislative authority ;) *but there is no civil coercion* amongst them : they never had any one *collective actuating power* among the whole, nor any magistrate or magistrates to execute such power.

* Reges erant auctoritate suadendi non potestate jubendi.

Tacit de Mor. Gern. § 11.

The race of white people migrating from Europe, still continue land-workers; and have made settlements in the parts of America which they occupy; and have transported thither bread-corn, sheep, oxen, horses, and other usually domestic animals, that are domesticated with these settlers.

They are a community—they are a society—they live under government, and have a fixed property in their lands; have a fixed permanent interest; which must subsist *under a continued series of security*. The locality of the labour of these settlers, necessarily produces a reciprocation of wants and an intercommunion of supply, by exchange of mutual necessities. This also leads to an intercourse of commerce with others, who are not immediately within their community—And hence arises a commercial interest to these settlers.

From the European desire of having the furs and peltry of the Indian hunters, and from the Indian desire of having the more useful and necessary tools and instruments of improved life; an *artificial reciprocation of wants* has arisen between the European settlers, and the original inhabitants of America; which hath gradually extended itself to many articles not at first called for—

And

And from this intercourse of commerce, has arisen a *necessary relation of politics between them.*

The only true spirit which ought to actuate these politics, must arise from a due knowledge of the circumstances and interests of each; and from a constant invariable attention to that composite interest which is formed by their alliance.

The interest of a community of settlers, must lie in a *permanent series of security* to their cultured lands; as the making settlements is by the successive yearly application of repeated labour, and of its eventual future effect. Settlers and landworkers want but small tracts of land; but must have a fixed and permanent local property therein. A nation of hunters require a much greater extent of country, in the proportion that the wide extended produce of a hunt, bears to the local bounded produce of a farm or settlement; so that the *Indian property of country, consists of two sorts, their dwelling lands and their hunt.*

The interest of a tribe of wanderers, lies in the protection and support of the aged, of the women and children—under the temporary locations of dwelling, which the se-

verity of the winter season ; the occasion of the procuring pulse in the season of vegetation ; and the times of parturition ; render necessary even to wanderers.

As fixed regulations and protection of trade, must be the essential spirit of the politics and the law of nations to a commercial nation * ; so an exact and strict observance of the laws of sporting, the protection of the game, and the most rigid sanction of the *hunt* ; (better perhaps understood by our sportsmen than our politicians ;) become the *laws of nations* to an *hunting nation*.

* Hunting being but the amusement, the diversion of a nation of settlers, the rights and laws of it may not appear as national points—but to a nation of hunters these become the national interests and the laws of nations.—A violation of these laws of nations ; as subsisting between nations of hunters, was the cause of the war between the Five-nation confederacy, and the Oilinois. The Ohio hunt, to the south-east of lake Erie, was common to these nations ; the laws of the hunt required, that at each beaver pond, the Indians should leave a certain number of males and females ; the Oilinois, on some occasion of pique, destroyed all. The Five-nations declared war against the Oilinois. The Indian war ends not but in the total reduction of the one or the other. The Oilinois were totally conquered. The conquered country, as well as the hunt, became the right of the Five-nations, and were, amongst the rest of their lands, put, by them, into the hands of the English in trust.

From

From these principles let us carry our considerations into facts.

The European landworkers, when they came to settle in America, began trading with the Indians; and * obtained leave of the Indians to cultivate small tracts as settlements or dwellings. The Indians, having no other idea of property than what was conformable to their transient temporary dwelling-places; easily granted this. When they came to perceive the very different effect of settlements of landworkers, creating a permanent property always extending itself, they became very uneasy; but yet, in the true spirit of justice and honour, abided by the effects of concessions which they had made; but which they would not have made, had they understood beforehand the force of them.

From this moment the politics of the Indians were fixed on, and confined to, two points. The guarding their dwelling lands and their hunts from the encroachments of the European settlers; and the perpetually

* Perhaps New-England may be an exception: The Indians began an unjust war against them; they conquered these Indians; and their claim is best, as well as justly, founded in conquest, which the Indians acknowledge.

labouring, (to our utter shame, in vain,) to establish some equitable and fixed regulations, in the trade carried on between them and the Europeans.

The European encroachments, not only by the extent of their settlements, but by their presuming to build forts in the Indian dwelling lands, and in the territories of their hunts, without leave, or by collusion; and the impositions and frauds committed against the Indians in trading with them, have been the occasion of constant complaint from the Indians; and the invariable source of Indian hostilities: and yet even these might have been surmounted, were it not that we have constantly added an aggravation to this injustice, by claiming a DOMINION in consequence of a *landed possession*. Against this, the free spirit of an Indian will revolt, to the last drop of his blood: This will be a perpetual, unremitted, cause of war to them against us. Against it, they have at all times, and upon all occasions protested; and they will never give it up. As long as we keep up this useless, faithless, claim of dominion over them; so long shall we be embroiled in war with them. The European power may perhaps finally extirpate them; but can never conquer them. The perpetually increasing generations of Europeans in America, may
supply

supply numbers that must, in the end, wear out these poor Indian inhabitants from their own country ; but we shall pay dear, both in blood and treasure, in the mean while, for our horrid injustice. Our frontiers, from the nature of advancing settlements, dispersed along the branchings of the upper parts of our rivers, and scattered in the dis-united vallies, amidst the mountains ; must be always unguarded, and defenceless against the incursions of Indians. And were we able, under an Indian war, to advance our settlements yet farther, they would be advanced up to the very dens of those savages. A settler wholly intent upon labouring on the soil, cannot stand to his arms, nor defend himself against, nor seek his enemy : Environed with woods and swamps, he knows nothing of the country beyond his farm—The Indian, knows every spot for ambush or defence. The farmer, driven from his little cultured lot into the woods, is lost : the Indian in the woods, is every where at home : every bush, every thicket, is a camp to the Indian ; from whence, at the very moment when he is sure of his blow, he can rush upon his prey. The farmer's cow, or his horse, cannot go into the woods, where alone they must subsist : his wife and children, if they shut themselves up in their poor wretched loghouse, will be burnt in it : and

the husbandman in the field will be shot down, while his hand holds the plough. An European settler, can make but momentary efforts of war, in hopes to gain some point, that he may by it obtain a series of security, under which to work his lands in peace: The Indian's whole life is a warfare, and his operations never discontinued. In short, our frontier settlements must ever lie at the mercy of the savages: and a settler is the natural prey to an Indian, whose sole occupation is war and hunting. To countries circumstanced as our Colonies are, an Indian is the most dreadful of enemies.—For, in a war with Indians, no force whatever can defend our frontiers from being a constant wretched scene of conflagrations, and of the most shocking murders. Whereas on the contrary, our temporary expeditions against these Indians, even if successful, can do these wanderers little harm. Every article of their property is portable, which they always carry with them—And it is no great matter of distress to an Indian to be driven from his dwelling ground, who finds a home in the first place that he sits down upon. And of this formidable enemy, the numbers, by * the latest accounts, are 23105 fighting men.

* This refers to the year 1763.

If

If we entertain an idea of conquest, in support of this ambitious folly of dominion, we must form such a series of magazines and entrepôts for stores, ammunition and provisions; we must maintain in constant employ such a numerous train of waggons for the roads, such multitudes of boats and vessels for the waters; we must establish such a train of fortified posts; we must support such a numerous army; we must form and execute such an enlarged and comprehensive system of command; as shall give us military possession of the whole Indian country. Let now any soldier or politician consider the enormous endless expence of all this conduct, and then answer to what profitable purpose such measure leads; which may in a much better and juster way be obtained.

If our government considers this well, and will listen to those who are best versed in Indian affairs, it will be convinced that honesty is the best policy; and that our dominion in America, will be best and surest founded in faith and justice, toward the remnant of these much-injured natives of the country.

In this hope, and with this view, I will endeavour to state the Indian rights, and our duty toward them; and to point out that
line

line of conduct, which leads to it—And first of the Kenunctioni, or the Five-nation confederacy.

The Indian lands are of two kinds—Their dwelling land, where their castles are; and their hunting ground. The dwelling lands of the Kenunctioni, or the Five-nation confederacy, is called Kenunctionîga, and is at the top or highest part of the continent, from whence the waters run every way—By the waters of Canada into the gulph of St. Laurence; by all the rivers of the English Colonies into the Atlantic ocean; by the waters of the Mississippi into the gulph of Mexico. They may, in a general manner, be thus described, by a line run from near Albany, north-westward, along the Mohawk river on the north side of it, north round Oneida lake, to the north-east corner of lake Ontario, thence along the lakes to Canahôga on lake Oswego or Erie; thence sixty miles directly back into the country; thence to Shamôkin, on the Susquehanna river; thence along the Cushiêtung mountains; thence again to the lower Mohawk castles. The Indians themselves describing, under confidence, to a friend of mine at Onondaga, this their situation, said, “That it has
“many advantages superior to any other
“part of America. The endless moun-
“tains

“ tains separate them from the English, all
 “ the way from Albany to Georgia. If
 “ they should have any design against the
 “ English, they can suddenly come down
 “ the Mohawk’s river, the Delaware, the
 “ Susquehanna, and Potomac, and that with
 “ the stream. They have the same advan-
 “ tage of invading the French, by the wa-
 “ ters of the river St. Lawrence, Sorel, &c.
 “ If the French should prevail against this
 “ country, they can, with their old men,
 “ wives and children, come down the
 “ streams to the English. If the English
 “ should prevail in attacking their country,
 “ they have the same conveyance down
 “ to the French; and if both should join
 “ against them, they can retire across the
 “ lakes.”

Their hunting lands are — *First*, Cauxsa-
 chraga, a triangle, lying on the south-east
 side of Canada, or St. Lawrence river,
 bounded eastward by Saragtoga, and the
 drowned lands; northward, by a line from
 Regiôchne point (on lake Champlain, or, as
 the Indians call it, Caniaderiguarûnte, the
 lake that is the gate of the country) through
 the Cloven rock, on the same lake, to Of-
 wegatchie, or la Galette; south-westward
 by the dwelling lands of the Mohawks,
 Oneidas, and Tuscaroraos.

Secondly,

Secondly, Ohio, all that fine country (and therefore called Ohio) lying on the south and east sides of lake Erie, south-east of their dwelling lands.

Thirdly, Tieuckfouckrondtie; all that tract of country lying between the lakes Erie and Oilinois.

Fourthly, 'Scaniaderiada, or the country beyond the lake; all that tract of country lying on the north of lake Erie, and north-west of lake Ontario, and between the lakes Ontario and Hurons.

The right of the Five-nation confederacy to their dwelling lands and the hunting ground of Couxfachrága, and even down to the bottom of lake Champlain, was never disputed. The lands to the northward of Regiôchne, and la Galette, have long since been ceded to the Canada Indians as an hunting ground.

In the year 1684, the Five nations finding themselves hard pressed by the French and their Indians, did, by a treaty at Albany, put the lands and castles of the Mohawks and Oneidas *under the protection of the English government*: and the English accordingly undertook *the trust* to guarantee them
to

to these Indians. And as the external mark, by which this act and deed should be announced, the Indians desired that the duke of York's * arms might be affixed to their castles.

The right of the Five-nation confederacy to the hunting lands of Ohio, Tieûck-fouchrondite and 'Scaniaderiada, by the conquest they had made in subduing the Shaö-anaes, Delawares, (as we call them) Twic-twes and Oilinois, may be fairly proved as they stood possessed thereof, at the peace of Reswick, in 1697.

In the year 1701, they put all their hunting lands under the protection of the English; as appears by the records, and by the recital and confirmation thereof in the following deed.

In the year 1726, the Seneccas, Cayou-gaes and Ononda-agaes acceded to the same terms of alliance, in which the Mohawks and Oneidas were already——So that the whole of the dwelling and hunting lands of the Five-nation confederacy, were put under

* The Duke of York was proprietor of all the tract called new Netherlands, viz. New-York and New Jersey.

the

the protection of the English, and held by them IN TRUST, for and to the use of these Indians and their posterity.

Copy of Agreement with the Sachems of the Five Nations.

TO all people to whom this present instrument of writing shall come, Whereas the Sachems of the Five Nations did, on the nineteenth day of July, One thousand seven hundred and one, in a conference held at Albany, between John Nanfan, Esq; late lieutenant-governor of New-York, give and render up all their land where the beaver-hunting is, which they won with the sword, then 80 years ago, to Coorakhoo *, our great King, praying that he might be their protector and defender there, for which they desired that their secretary might then draw an instrument, for them to sign and seal, that it might be carried to the King, as by the minutes thereof, now in the custody of the secretary for Indian affairs at Albany, may fully, and at large appear.

WE, Kanakarighton and Shanintfaronwe, Sinneke Sachems; Ottfoghkoree Dekaniso-

* It is by this name that they mean the King of England.

ree and Aenjeueratt ; Cayouge Sachems ;
 Raclyakadorodon and Sadageenaghtie, Onondago Sachems, of our own accord, free and voluntary will, do hereby ratify, confirm, submit and grant ; and by these presents do (for ourselves, our heirs and successors, and in behalf of the whole Nations of Sinnekes, Cayouges and Onondages) ratify, confirm, submit and grant unto our most Sovereign Lord George, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, &c. his heirs and successors for ever, all the said land and beaver-hunting, *to be protected and defended by his said majesty*, his heirs and successors, *to and for the USE of us, our heirs and successors, and the said three Nations* ; and we do also of our own accord, free and voluntary will, give, render, submit and grant, and by these presents do, for ourselves, our heirs and successors, give, render, submit, and grant unto our said Sovereign Lord King George, his heirs and successors for ever, all that land lying and being sixty miles distance taken directly from the water, into the country, beginning from a Creek called Canahôge, on the lake Oswego, all along the said lake, and all along the narrow passage from the said lake to the falls of Oniâgara, called Canaquaraghe, and all along the river of Oniâgara, and all along the lake Cataraqui

qui to the creek called Sodons, belonging to the Sinnekes, and from Sodons to the hill called Tegechunckferôde, belonging to the Cayouges, and from Tegechunckferôde to the creek called Cayhunghâge, belonging to the Onondages; all the said lands being of the breadth of sixty English miles as afore-said, all the way from the afore-said lakes or rivers, directly into the country, and thereby including all the castles of the afore-said three Nations, with all the rivers, creeks and lakes, within the said limits, *to be protected and defended by his said majesty, his heirs and successors for ever, to and for our USE, our heirs and successors, and the said three nations.*——

In testimony whereof, we have hereunto set our marks and affixed our seals, in the city of Albany, this fourteenth day of September, in the thirteenth year of his majesty's reign, *Annoque Domini 1726.*

The mark of
Raclyakado-
rodon,



a Sachem of
the Ononda-
ges. (L.S.)

The mark
of Kana-
karighton,



a Sachem
of the Sin-
nekes.
(L. S.)

The mark of
Otsoghkoree,



a Sachem of the
Cayouges.
(L. S.)

The mark of Sa-
degeenaghtie,



a Sachem of the
Onondages. (L. S.)

The mark of
Dekaniforee,



a Sachem of the
Cayouges.
(L. S.)

The mark of
Shanintfa-
ronwee,



a Sachem of
the Sinnekes.
(L. S.)

The mark
of Aenjew-
eratt,



a Sachem of
the Cayou-
ges. (L. S.)

Signed, sealed, and delivered,
in the Presence of us

Philip Livingston,
Peter Vanbrugh,

Mynderst Schuyler,
Lawrence Claufen.

Secretary's Office, New-York. The pre-
ceding is a true copy of the Record in Lib.
Patents, Numb. 9. p. 253, 254. Examined
and compared therewith by

GEO. BANYER, Deputy Secretary.

Instead

Instead of executing *this trust* faithfully and with honour; by extending to the Indians our civil protection against the frauds of the English, and our military protection against the attempts of the French; we have used this trust only as a pretence to *assume a dominion* over them—We have suffered the English settlers to profit of every bad occasion to defraud them of their lands—We have never made any effectual regulations to prevent their being defrauded in their trade; and until our own interest appeared to be affected, we abandoned them to their own chance and force, opposed to the strength of a powerful enemy. Nay, when at last we thought necessary, for the sake, not of national faith and honour; for the sake, not of these our faithful allies; but for the sake of our own safety and interest, to interfere, in opposing the French encroachments; * we took it

* Seeing, when I was at Alexandria, by order of the late Duke of Cumberland, to meet General Braddock, the heedless headlong way of proceeding—on which Colonel Johnson was ordered (as though the Indians were slaves, or under military discipline) to bring so many Indians into the field; I remonstrated against this proceeding, and stated, That if we did expect to engage the Indians to join us, we must do it *on the ground of their treaties with us*. This was neither perfectly understood nor attended to: Yet from the situation in which both General Braddock and General Shirley knew I then stood — they found it prudent to give some attention to what I suggested; and desired me to draw up some instructions

it up as disputing the empire of America with the French; not as protecting and guarding the Indian lands and interest to their use, agreeable to the sacred trust by which we were bound.—And thus these savages (as we to our own shame call them) repeatedly told us, “ That both we and the French sought to amuse them with *fine tales* of our several upright intentions: “ that both parties told them, that they “ made war for the protection of the Indian “ rights, but that *our actions* plainly discovered that the war was only a contest “ who should become masters of the country, which was the property neither of “ the one nor the other.” Since we have driven the French government from America, we have confirmed this charge of the Indians against us; by assuming that dominion which in faith and justice we cannot say we have gained over the Indians, which, in fact, we have not gained, and which (be it remembered) will cost more blood and treasure before we do gain it, than it is for the honour and interest of Great-Britain to expend in so bad and useless a cause. While

instructions for Colonel Johnson. On that ground I immediately drew up those which are in the Appendix, N^o. XI. —which were sent after Colonel Johnson; and which became the ground, as Colonel Johnson afterwards wrote me, on which he was enabled to engage the Indians.

these

these poor tribes of hunters remain, it will be our own fault if they do not remain in perfect harmony and good alliance with us. As hunters, their interest can never interfere with ours, as settlers; but, on the contrary, will become the source of a natural and the most profitable trade to us as traders. They are continually wearing away, and as they diminish or retire, they cede their lands to us in peace; which we thus in time (as fast as we can really want them) may possess in right and justice, untainted with the impeachment of having been gained by murder and fraud. While therefore we do remain a great and just nation, as we pride ourselves Great Britain is; we should abhor the black base thought of using the power which providence hath given us, to the ruin and destruction of these brave and free people; of these people who gave us our first settlement in this country, and have lived with us, except under some temporary interruptions, in a series of faithful alliance.

If these considerations, taken up in the course of that general review of the Colonies, and of the administration of their affairs, which I now publish, were intended as an express treatise on Indian affairs; I should think it right to examine all the complaints and several claims of justice which the Five-nations have made, and have repeated for many years; which I would found first on

extracts from the records of Indian affairs; and secondly, on the history of the landed patents; and thirdly, on the occasions taken to erect, without their leave, forts on the Indian lands, which measure the Indians always consider as an act of dominion. In this general view I shall only point out that shameful patent of Ka-y-adarofferos above Albany: that pretence of claim by the corporation of Albany for the Mohawk-flats, the very residence of the Mohawks, and some others on the Carrying place, at the head of the Mohawk river—all which ought to be taken into immediate consideration, that justice may be done both to the Indian and European claimants; and that the matter may not remain perpetual cause of umbrage, and perhaps the source of war. Government ought also very seriously to revise the principles on which they are now endeavouring to take possession of the Indian country by forts and garrisons; built many within the Indian dwelling lands, and many within their hunting lands, and on the passes and communications of these. It is undoubtedly right to maintain the command of that country; but there is a way to do it with safety and justice. The measures we are taking by force, will be found to have neither the one nor the other in them; nor do I see how common prudence can adopt the enormous charge to which such measures must lead.

We have seen that Sir William Johnson, although he took Niagara *from the French* by force of arms, never considered this as a conquest of these lands *from Indians*; but has, agreeably to his usual prudence and his perfect knowledge of Indian affairs, obtained by formal treaty, a cession of these lands from the Indians to the crown of Great-Britain. The wisdom, as well as the success of this example, ought to lead our politics to the same conduct in every other case, where we have built or obtained forts within their lands, especially as many of them were built under express promise of their being dismantled as soon as the war should cease; and as the Indians were expressly and solemnly promised to have a satisfaction given to them for the use of these lands *.

The Shawänese and Delawares are more immediately connected with the province of Pennsylvania; and although, as subdued by, they are under obedience to the confederacy of the Five-nations; yet, under tutelage and protection of the confederacy, they possess their rights to their own country. Was this, as I have said, a particular treatise on Indian

* This advice was taken under the measure of the Indian treaty directed from hence to be entered into and perfected by Sir William Johnson, called the treaty of Fort Johnson.

affairs, I might here point out “*the causes of the alienation of the Delawares and Shawanese Indians from the British interest; by extracts from the public treaties, and other authentic papers relating to the transactions between the government of Pennsylvania and the said Indians for near forty years past,*” as set forth in a memoir which I have had by me for many years. I could also from a series † of letters for ten years, from Monsieur de Vaudreuil, while governor of Louisiana, to his court; point out these neglects and errors; as also the manner in which the French profited of those our errors, by which we lost the Cherokees, and other southern tribes.

After what has been explained, it will be sufficient here to say, that, 1st, Doing justice to our faith and honour, by treating the Indians according to the real spirit of our alliances with them; 2dly, That doing the Indians justice in their lands; and 3dly, Giving up that idle, useless claim of dominion over them; are points absolutely and indispensibly necessary to be adopted into our politics; unless we have seriously taken the resolution to force our way by war. Until these points are adopted, we never shall have

† These letters in manuscript are authentic; but I am not at liberty to say how they came into my possession.

peace——And it deserves thorough and mature deliberation how we engage to settle and possess America by war.

These measures of sound policy once fixed upon, the next step is to establish an Administration for the conducting Indian affairs.—

This part of the plan which I proposed, is in part adopted, by dividing the management of Indian affairs into two Intendencies—one for the northern, the other for the southern nations; but, as every thing which I could say further on this head, hath been some years past stated in the memorial annexed to these papers, I will here refer the reader to * that memorial on these points.

The measures recommended therein I have by an opportunity of comparing them with the events of eight † years, found to be such as I do most sincerely wish may be carried into execution — And if a private person might presume to obtrude advice, (which has not formerly been neglected, when the affairs of the plantations were full as happily administered, as they have been of late) I would now venture to recommend the consideration of these measures, to those whose duty it is to act in these matters. When these matters shall be settled as they ought to be, then it may be time to take up the

* Appendix, No. VIII.

† This refers to the year 1755.

consideration of proper regulations for the Indian trade : and when that time comes ; if a plan, which I have accidentally seen, be carried into execution ; I would venture to say, that every thing which can or ought to be done in Indian affairs will be effected.

C H A P. VIII.

Consideration of the Commerce which arises from Colonies ; and Revision proposed of the actual state of that of the British Colonies.

IF with the same spirit, guided by the same principles, a revision was made of the laws of trade, so far as they respect the Colonies ; it would answer more wise ends of government, and more the interest of the governed, both here as well as in the Colonies ; than any endeavour, even though successful, to carry the present laws into execution.

The principles on which the act of navigation is founded are just, and of sound policy ; but the application of them, by the modes prescribed, as the laws now stand, to the present state of the Colony trade, is neither founded in justice or prudence. Any spirit that would force this application, would injure the principles themselves, and prove injurious to that commercial interest, which those very acts of trade mean to secure

cure to Great Britain : whereas, upon a due revision of those laws, it would appear that there are means of producing this same end, consistent with the particular interest of the Colonies, and what would carry the general commercial interest of the mother country to the utmost extent that it is capable of.

The laws of trade respecting America, were framed and enacted for the regulating *mere plantations* ; tracts of foreign country, employed in raising certain specified and enumerated commodities, solely for the use of the trade and manufactures of the mother-country—the purchase of which, the mother-country appropriated to itself. These laws considered these plantations as a kind of farms, which the mother country had caused to be worked and cultured for its own use. But the spirit of commerce, (operating on the nature and situation of these external dominions, beyond what the mother country or the Colonists themselves ever thought of, planned, or even hoped for) has wrought up these plantations to become objects of trade ; has enlarged and combined the intercourse of the barter and exchange of their various produce, into a very complex and extensive commercial interest : The operation of this spirit, has, in every source of interest and power, raised and established the

the *British government on a grand commercial basis*; has by the same power, to the true purposes of the same interest, extended the British dominions through every part of the Atlantic Ocean, to the actually forming A GRAND MARINE EMPIRE; if the administration of our government, will do their part, by extending the *British government* to wheresoever the *British dominions* do extend. If, on the contrary, we are predetermined to carry into strict and literal execution, the navigation act, and other laws respecting the plantation trade — without reviewing and considering what the very different circumstances of the Colonies now are, from what they were when they were first settled, merely as plantations, and when these laws were first made, — we must determine to reduce our Colonies again to such mere plantations: We must either narrow the bottom of our commercial interest, to the model of our plantation laws; or we must enlarge the spirit of our commercial laws, to that latitude to which our commercial interest does actually extend. Thus stands the fact—This is the truth—There is no other alternative. But if we would profit of them in those great commercial benefits, to those great political purposes, which they are capable of producing; which they lead to; which the whole strain of our politics have, for many years, taught us to value

value ourselves upon ; and which have really been the source of all our wealth and power ; we must examine thoroughly the state of this commercial interest, we must make a sincere, unprejudiced and candid review of these laws of trade, — and by true and more enlarged principles, model them on the ideas of regulating the conduct and the interest, of various and widely extended parts of a one great commercial dominion.

The view of Colony-trade in general, as well as of manufactures in particular, terminates in securing an extensive and permanent vent ; or to speak more precisely (in the same manner as shop-keeping does) in having many and sure customers : The wisdom therefore of a trading nation is to gain, and to create, as many as possible. Those whom we gain in foreign trade, we possess under restrictions and difficulties ; and may lose in the rivalry of commerce. Those that a trading nation can create within itself, it deals with under its own regulations ; and makes its own ; and cannot lose. In the settling Colonies, a nation creates people, whose labour, being applied to new objects of produce and new materials of manufacture, opens new sources of commerce. By these means the people thus created, not only live in ease and affluence within themselves, but while they are labouring under and for
the

the mother country (for there all their external profits center) become an increasing nation of appropriated customers to their mother country. They not only encrease our manufactures and exports by what they consume themselves ; but, in the course of their circuitous trade, extend our commerce also.

So far as our Colony-trade is a *monopoly*, government should precisely direct its care to two essential points : 1st, That all the profits of the culture, produce and trade of these Colonies, center finally in the mother country.—2dly, That the Colonies continue to be the customers purchasing of the mother country alone. On the other hand, so far as their circuitous trade either extends the commerce of the mother country, or creates by its activity a balance which finally centers in it—*every relaxation, which is not destructive of this monopoly*, should, if not of favour, yet of worldly prudence, be permitted to these Colonies. Further, as this monopoly is an oppressive, though a necessary abridgement of that freedom, which British subjects within the realm enjoy, and is an imposition, if not a direct tax, to the amount of the external balance of such trade — wise and true policy will be careful how (to use the expression of an old proverb) it “ *taxes the calf in the cow’s belly.*”

I will

I will first describe the circuit of the North American commerce, and then suggest some such measures as may tend to produce a happy establishment of our trading interest, on true commercial principles. As the matters contained in the following representation, are fairly stated, according to the truth and fact; and the consequences thence deduced, are such as actual experience shows to be in existence; I am sure I cannot give a more clear, distinct, or better state of the American commerce than it contains.

* This representation states, that it is the singular disadvantage of the Northern British Colonies, that, while they stand in need of vast quantities of the manufactures of Great Britain, the country is productive of very little which affords a direct remittance thither in payment; and that from necessity therefore, the inhabitants have been driven to seek a market for their produce, where it could be vended; and, by a course of traffick, to acquire either money, or such merchandize as would answer the purpose of a remittance, and enable them to sustain their credit with the mother country. That the prodigious balance arising in her favour, is a fact too well known to the merchants of Great Britain trading to those parts, to need

* New-York petition.

any elucidation : but, as the nature of the petitioners commerce when free from restraints, *which they think of fatal effect, and destructive to it*, ought to be understood ; they beg leave to observe that their produce when sent to our own and the foreign islands, was chiefly bartered for sugar, rum, melasses, cotton, and indigo ; that the sugar, cotton, and indigo, served as remittance to Great Britain ; but the * rum and melasses

* This rum and melasses became, to the Carolinas and other southern Colonies, not only a matter of aid in their own consumption, but also an article in their Indian commerce ; became to the inhabitants of New England and New Scotland, an aid in their internal consumption, but also a considerable aid to the consumption in their fishery. The avowed and chief articles of commerce between North America and the parts of Europe to the southward of Cape Finistire are, fish and rice. Rice is the produce of Carolina, and the fishery is the more peculiar business of New England and Nova Scotia. Each of these countries produces and manufactures, the one more rice, the other more fish than they consume in their own subsistence and in their own foreign trade ; and so each exchanges that surplussage for the rum, or rather the melasses which the New Yorkers fetch from the West Indies. By which the New Yorkers, like the Dutch in Father-land, chiefly carriers, are enabled to make out adventures to the Streights and to Africa.——Since the writing of the note above, corn and flour, carried directly to foreign ports in Europe, has become a most extensive and important branch of American commerce. It is carried chiefly from the Middle Colonies ; a great deal however comes from Canada.

constituted

constituted essential branches of the petitioners commerce, and enabled them to barter with our own Colonies for fish and rice; and by that means to pursue a valuable trade with *Spain, Portugal, and Italy*, where they chiefly obtained money or bills of exchange in return; and likewise qualified them for adventures to Africa, where they had the advantage of putting off great quantities of British manufactures, and of receiving in exchange, gold, ivory, and slaves; which last, disposed of in the West India islands, commanded money or bills: Rum was indispensable in their Indian trade; and, with British manufactures, procured furs and skins, which served for considerable returns to Great Britain, and encreased the revenue thereof: that the trade to the bay of Honduras was also very material to their commerce, being managed with small cargoes of provisions, rum, and British manufactures; which, while they were at liberty to send foreign logwood to the different ports in Europe, furnished them with another valuable branch of remittance; that, from this view, it is evident that sugar, rum, melasses, and logwood, with cotton and indigo, are the essentials of their return - cargoes, and the chief sources from which, in a course of trade, they have extended their usefulness

to, and maintained their credit with Great Britain.

That considering the prodigious consumption of West India produce in Great Britain, Ireland, and the continental Colonies; the rapid increase of those Colonies, (their inhabitants already exceeding * two millions); the vast accession of subjects by the late conquests; besides the innumerable tribes of Indians in the extensive countries annexed to the British crown; the utter incapacity of our own islands, to supply so great a demand, must be out of all question: On the other hand, the lumber produced from clearing this immense territory, † and provisions extracted from the fertile soil, which most of the inhabitants are employed in cultivating; must raise a supply for exportation, with which the consumption of our own islands can bear no sort of proportion; ‡ that it seems therefore

* Including the Blacks.

† This includes bread-corn, biscuit, flour, beef, pork, and the smaller articles of live stock.

‡ If we, by artificial restraints, endeavour to cut off from between the foreign West India islands, and our North American Colonies, that intercourse and exchange of supplies which is now necessary to them; or to clog it in a manner that renders it detrimental or impracticable to those islands;—may we not force them

therefore consistent with sound policy to indulge those Colonies in a free and unrestrained exportation of all the lumber and produce they raise and can spare; and an ample importation of sugar, rum, and molasses, to supply the various branches of their trade, to which they appear so necessary; that, without the one, the clearing of new lands, which is extremely laborious and expensive, will be discouraged; and provisions, for want of vent, become of little profit to the farmer: without the other, the petitioners must be plunged into a total incapacity of making good their payments for British debts; their credit must sink; and their imports from Great Britain gradually diminish, till they are *contracted to the narrow compass of remittances, barely in articles of their own produce*; and that, how little soever their interest of commerce could be promoted, the Colonies, thus checked, must, from inevitable necessity, betake themselves

them into what should seem their natural course of commerce; an intercourse with their own Colonies, in the southern latitudes? whence they may be supplied with all those articles of lumber and live stock, and bread-corn, &c. which at present, by a lucky, rather than a natural or necessary course of trade, create almost a monopoly to Northern American Colonies of the West India supply.

to manufactures of their own, which will be attended with consequences very detrimental to those of Great Britain. The petitioners, having thus represented the nature of their commerce, proceed to point out the several grievances, which it labours under, from the regulations prescribed by the laws of trade; and which, if not remedied, they conceive must have a direct tendency to prevent the cultivation, and ruin the trade, of the Colonies, and prove highly pernicious to both the landed and trading interest of Great Britain ||.

That the heavy embarrassments, which attend the article of sugar, is a capital subject of complaint; and, besides the absolute necessity of a great importation to sustain their trade, it is a well known truth, that it often happens, at the foreign islands with which they have intercourse, that a sufficient return-cargo, independent of sugar, cannot

|| Whether the British merchant will attend to this or not—it is nevertheless true. The views of merchants seldom, in course of trade, go beyond themselves, and the present profit,—but the statesman, whether we look to him in administration or in parliament, ought thoroughly to weigh the truth and consequence of this asserted fact, as it may affect the British commerce in general.

be procured; which alone must render trade precarious and discouraging; but the high duty of five shillings sterling a hundred is proved, by experience, to be excessive, and has induced the fair trader to decline that branch of business, while it presents an irresistible incentive to smuggling, to people less scrupulous; that it answers not the purposes of the government, or of the nation, since it cannot be duly collected; and, if it could, would have a necessary tendency to contract the remittances for British debts, while, at the same time, it is most mischievous to the Colonies, by cutting off one of the grand springs of their traffic; and, that the pressure of this duty is not aggravated, the petitioners appeal to the officers of the customs at their ports; that the petitioners therefore most humbly intreat, that a moderate duty be laid on foreign sugars; which, they are assured, would not only greatly conduce to the prosperity of those Colonies, and their utility to the mother country; but encrease the royal revenue far beyond what can be expected under the present restraints.

* That the compelling merchants to land

* That the New Yorkers, (only carriers,) should regard this regulation with uneasiness, is natural; but surely it is a wise and prudent regulation, for the benefit of the British Isles, to create and give a preference to the British produce and manufacture of the subjects of those Islands.

and store foreign sugars in Great Britain, before they can be exported to other parts of Europe, is another most expensive and dilatory restriction, without being of any material advantage to the revenue of Great Britain; for it effectually puts it out of the petitioners power, to meet foreigners at market upon an equal footing; is a great and heavy burden in times of peace and security; but in war, will expose the trader to such peril and hazard, as must wholly extinguish this useful branch of remittance: That British plantation sugar, exported from North America, should be declared French on being landed in England, the petitioners conceive may justly be classed among the number of hardships, inflicted by those regulations; as in effect it deprives them of making a remittance in that article, by exposing them to the payment of the foreign duty in Great Britain; which appears the more severe, as their fellow subjects of the islands are left at liberty to export those sugars for what they really are; and a distinction is thus created in their favour, which the petitioners cannot but regard with uneasiness.

That foreign rum, French excepted, is the next article which the petitioners most humbly propose for consideration; as the importation thereof, on a moderate duty, would add considerably to the revenue, prevent

vent smuggling, promote the petitioners navigation, encrease the vent of their own produce with British manufactures, and enable them to bring back the full value of their cargoes; more especially from the Danish islands of St. Thomas and St. Croix, from whence they can now only receive half the value in sugar and cotton, consequently rum alone can be expected for the other half; those islands affording nothing else for returns, and having no specie but of a base kind.

That the exportation of foreign logwood to foreign markets has already been distinguished as one of the principal means, by which those Colonies have been enabled to sustain the weight of their debts for British manufactures; and it is with the greatest concern, the petitioners observe it to be ranked by the late act among the enumerated articles; and consequently made subject to the delay, the hazard, and expence, of being landed in Great Britain; the low price of logwood, its bulk, and the duty with which it is now burthened, must totally destroy that valuable branch of the petitioners commerce, and throw it into the hands of foreigners, unfettered with those heavy embarrassments.

That their lumber and pot-ash even when shipped for Ireland, where they are so necessary; the latter particularly, for the progress of their linen manufacture; and provisions themselves, though intended to relieve that kingdom from a famine; are subject to the same distressing impediments; nor is flax-seed (on the timely importation of which the very existence of the linen manufacture of Ireland immediately depends,) exempted, although it is a fact capable of the most satisfactory proof, that, without the delay now created, it has been with difficulty transported from that Colony, to be there in proper season for sowing; that what renders so injurious an obstruction the more affecting, is the reflection, that, while it deprives the petitioners of the benefits arising from flax-seed, lumber, and pot-ash; these articles may all be imported into Ireland directly from the Baltic, where they are purchased from foreigners, under the national disadvantage of being paid for with money instead of manufactures; and the petitioners therefore humbly beg leave to express their hopes, that an evil in so high a degree pernicious to them; to the staple of Ireland; and to the trade and manufactures of Great Britain; and which in times of war must fall on all with a redoubled weight; will not fail of obtaining

ing the attention of the house, and an immediate and effectual redress.

That they beg leave further to represent, that the wines from the islands, in exchange for wheat, flour, fish, and lumber, would considerably augment the important article of remittance, was the American duty withdrawn, on exportation to Great Britain: and that it is therefore humbly submitted, whether such an expedient; calculated at once to attach them to husbandry, by expanding the consumption of American produce; to encourage British manufactures, by enabling the petitioners to make good their payments; and to encrease the royal revenue, by an additional import of wines into Great Britain; will not be consistent with the united interests both of the mother country and her Colonies.

That the petitioners conceive the North American fishery to be an object of the highest national importance; that nothing is so essential for the support of navigation; since by employing annually so great a number of shipping, it constitutes a respectable nursery for seamen; and is so clearly advantageous for remittances, in payment for British manufactures; that the petitioners therefore

therefore humbly presume, that it will be cherished by the house with every possible mark of indulgence; and every impediment be removed, which tends to check its progress.

That the enlarging the jurisdiction of the admiralty, is another part of the statute of the fourth of his present majesty, very grievous to the trade and navigation of the Colonies, and oppressive to the subject; the property of the trader being open to the invasion of every informer, and the means of justice so remote as to be scarcely attainable.

That the petitioners beg leave to express the warmest sentiments of gratitude, for the advantages intended by parliament, to America in general, in the opening free ports at the islands of Jamaica and Dominica; yet, at the same time, they cannot but lament, that it is their unhappiness to be in no condition to reap the benefits which, as it was imagined, would flow from so wise a policy; that the collecting great quantities of the produce of Martinico, Guadaloupe, &c. at the island of Dominica, will be the natural consequence of opening that port, and would prove of real importance to those Colonies, were they at liberty to bring them back, in
return

return for their lumber and provisions ; but, as they are now prohibited from taking any thing, except melasses ; and, it is justly apprehended, there cannot be a sufficient quantity of that commodity to support any considerable trade ; the petitioners think it evident, that no substantial advantage can be derived to them under such a restraint : that they are, at the same time, at a loss to discern the principle on which the prohibition is founded ; for, since sugar may be imported direct from the foreign islands, it seems much more reasonable, to suffer it from a free port belonging to Great Britain ; that the petitioners therefore humbly hope, that it will be thought equitable to adapt this trade to their circumstances, by granting them liberty to import into the Colonies, all West India productions, in exchange for their commodities. That upon the whole, although, at the last session, the necessity of relieving the trade of those Colonies seems to have been universally admitted, and the tender regard of parliament for their happiness highly distinguished ; nevertheless, experience has evinced, that the commercial regulations, then enacted, instead of remedying, have encreased the heavy burthen under which it already laboured.

“ In

* “ In this survey one thing must be
 “ taken notice of as peculiar to this country,
 “ which is, that as in the nature of its
 “ government, so in the very improvement
 “ of its trade and riches, it ought to be
 “ considered not only in its own proper
 “ interest, but likewise in its relation to
 “ England, to which it is subordinate, and
 “ upon whose weal in the main, that of this
 “ kingdom depends, and therefore a regard
 “ must be had to those points wherein the
 “ trade of Ireland comes to interfere with
 “ any main branches of the trade of Eng-
 “ land, in which case the encouragement
 “ of such trade ought to be either declined
 “ or moderated, and so give way to the
 “ interest of trade in England. Upon the
 “ health and vigour whereof the strength,
 “ riches and glory of his majesty's crown
 “ seem chiefly to depend. But on the other
 “ side, *some such branches of trade ought not*
 “ *wholly to be suppressed*, but rather so far
 “ admitted as may serve the general con-
 “ sumption of the kingdom, *lest by too great*

* Letter of Sir William Temple to Lord Essex, in July 22, 1673, concerning the state of Ireland, wherein the reader will see the survey taken of the trade of that country, at that time, so apposite to the state of the trade of the Colonies at this season, it will be impossible not to apply it.

“ *an* principle, the present laws direct, (except in some special particulars) that the Colonies shall

“ an importation of commodities, though out of
 “ England itself, the money of this kingdom
 “ happen to be drawn away in such a degree,
 “ as not to leave a stock sufficient for turning
 “ the trade at home.”

If many of these regulations above proposed and submitted to consideration, cannot be admitted; while the Colonies are, by the laws of trade, considered as *mere plantations*: And if the improved commerce of the Colonies, cannot any longer subsist as a branch of the commercial interest of Great Britain, if they are not admitted; Great Britain is reduced to the dangerous alternative, of either giving up the subordination of the trade of its plantations, or of giving up its commerce, as it hath been extended and improved, by its Colonies becoming commercial states: from which, otherwise inevitable danger, nothing but the general plan of union, as repeatedly above recommended, can preserve it.

The general principle of the laws of trade regulating the Colony trade, is, that the Colonies shall not, on one hand, be supplied with any thing but from a British market; nor export their produce any where but to a British market. In the application of this principle, the present laws direct, (except in some special particulars,) that the Colonies

shall import all their supplies *from Britain*, and carry all their produce *to Britain*.

If now, instead of confining this market for the Colonies to Britain only, which is a partial and defective application of the general principle whereon the act of navigation is founded; this Colony trade was made, amidst other courses of trade, an occasion of establishing *British markets even in other countries*; the true use would be derived to the general interest from these advantageous circumstances; while in particular the Colonies and the mother country would be mutually accommodated. In the first case, the general interest, perverted to partial purposes, becomes so far forth obstructed; in the second, it would be carried by the genuine spirit of it, to its utmost extent.—If, under certain restrictions, securing all those duties which the produce of the Colonies, carried to market, ought to pay to the mother country; the Colonies were permitted to export their produce (such as are the basis or materials of any British manufacture excepted) directly to foreign countries; if so be they sold it to any *British house* established in such place, and were also permitted, if they bought their supplies from a *British house* established in those parts, to supply themselves with the natural fruits and produce of
that

that country (all manufactures that any way interfere with the British manufactures excepted) paying there to some British officer, (or upon their arrival in the Colonies) the same duties as they would have paid by purchasing the same commodities in England; every end proposed by the principle of the act of navigation would be answered; the exports of the Colonies would be encouraged; and *the British market* greatly extended.

The Colonies would not only trade to, and be supplied by, a *British market*; but would become an occasion of establishing the British market in foreign countries. The same reasons of commerce, which, in a narrower view, became the grounds for establishing factories at Petersburg, Riga, Hamborough, Lisbon, Cadiz, &c. would on a more general and extensive basis become the foundation for establishing and building up *these British markets* in every region to which our trade extended itself; for while it necessarily enlarged the special interest of the Colonies, it would enlarge it only at British markets, and to the final profit of the British general commerce: The profits of such market, finally centering in Great Britain. If this maxim be not true—that the profits of the factories settled in foreign ports, finally

I center

center in Great Britain; the measure of establishing such is false in policy: If the maxim be true, the permitting our Colony exports, to go directly to the ports where such factories are established; is not contrary to the principle on which the act of navigation arose, but becomes coincident with, and aiding to it, in extending the British navigation and British markets, and securing the final profits thereof to Britain only.

If this method of reasoning be found not contrary to the principle of the act of navigation; if this measure, at the same time that it encourages the trade of our Colonies, is found to do it in a way subservient to the general commerce of Great Britain; extending the British markets, and securing the final balance of profit to Britain only; if this spirit of administration, so far as government has a right to direct the course of trade, be adopted in this part of it; the great points which it has to secure, are first, that the Colony-exports to, and the supplies purchased by them from, those foreign ports, *be sold and bought at a British market only.*—The government has a right to extend its laws to these Colony traders, and to the factories established in foreign ports.—It can therefore, partly by such laws as it finds proper to enact, for the regulation of this
factory

factory trade; and partly by obliging these Colony traders to give bond before their departure from the Colonies; secure and confine all these transactions of that commerce, which is permitted at any such port, *to a British market only*; the laws that established these, being a favour extended to the Colonies; and promoting the interest of these factories, would, as all laws of trade should do, execute themselves; and by giving the requisite powers to a consul or naval officer resident there, would be easily administered by such officer.

The next point to be guarded, would be the securing those duties, which this trade ought to pay, to the government of Great-Britain: If the same duties were paid, or security for them taken in these foreign ports, as would be or should be paid by the Colony trade, if the traders were still obliged to come to Britain; every end would be answered to the government revenue; and these charges might be sufficiently secured, by obliging all these traders to sail under bond. The arrangements to be taken in such case, ought to be that of adding to the office of consul, such powers as in the Colonies, (before the establishment of special revenue officers there,) were given to the naval officer; or to establish a naval officer. The consul

or naval officer, in this branch of his administration, should be subordinate to the commissioners of the customs and the lords of the treasury. If the duties were collected by him, in the ports of his district, he should account and give security for the same: if bonds only, (as security for the payment at such British or plantation ports,) were given; he should keep the register of the same; and correspond with the commissioners of the customs, and such officers as they direct, as to the fulfilling, cancelling, or prosecuting to effect, said bonds. These general arrangements, taken; together with such further special regulations, as the experience of the commissioners of the customs should suggest; the revenue of the Colony and factory trade, under this mode of administration, would be well secured, cheerfully paid, and easily collected.

Under the administration of such measures, there does not appear any reason why all the produce of the British Colonies, which are not the basis of, or do not interfere with the British manufactures, might not be carried directly to a *British market at a foreign port*, —and why the carrying of rice to foreign ports might not be extended, under these laws, to all such foreign ports whereat a British factory is established. — Nor under this mode

mode of commerce, can any sufficient reason upon earth subsist, why the Colony traders should not be permitted to load at these ports, the fruits, wine, oil, pickles, the produce of that country; and also such raw unmanufactured produce, as would not interfere with the manufacture of Great Britain; instead of being obliged to come to Britain to buy or reload here, (after the expence of an unnecessary voyage,) those very commodities which they might have bought in a *British market*, at the port which they left. Why not any of these, as well as salt; as well as wines from the Madeiras and Western isles? In the same manner, by the same law, why may not our Colony traders be permitted to carry sugar, ginger, tobacco, rice, &c. to such ports in the rivers Weser and Elbe, in the Sound and in Russia, whereat a British factory is, or may be established? It can never be right policy to suffer labour in vain in a community: it is just so much lost to the community: and yet this coming round by England, is labour in vain: If the subordination of the Colony-trade, and the duties arising thereon, can be by any other means secured, it is so much labour lost. The two points of a *British market*, and the revenue of the duties being secured; why may not these traders be permitted to load at these ports directly for the Colonies, hemp, yarn,

and such coarse linens, as do no way interfere with the British manufactories? These measures taken, which would prove to be the true means of encouraging the Colony-trade, the best method to put a stop to the contraband trade carried on in this branch of business, and the true grounds whereon to establish the general commercial interests of Great Britain; government could not be too strict in enforcing the execution of the laws of trade; nor too severe in punishing the breach of them.—Wherever they found these traders endeavouring to carry from these ports to the Colonies, raw silk, silks, velvets, foreign cloths, laces, iron, steel, arms, ammunition, sails or rigging, or any manufactures whatever, that interfere with the manufactures of Great Britain: whenever they found these traders endeavouring to carry from the Colonies to those ports, any dying-wood whatever; indigo, cotton, silk, bees or myrtle-wax; flax-seed, naval stores, furs, skins or peltry; hides, provision, grain, flour, bread or biscuit; whale-oil, blubber, bone, or any other fish-oil; or tallow, or candles; with an exception perhaps to myrtle and spermaceti candles; government could not be too strict and watchful to restrain them. Under proper regulations, the rum of the northern Colonies should be carried to Africa; and the sale of it to the French on the banks

of Newfoundland encouraged, if such vent could be procured; as we should thereby reap at least some share even of the profit of the French fishery.

In the above revision of, and the proposed regulations for the Colony trade, as connected with that of Europe; it will be seen that all mention of East India goods is purposely omitted. I think a special measure might be contrived of supplying the Colonies with East-India goods, in a way that would effectually put a stop to that contraband trade, by which it is complained they are at present supplied; in a way by which one of the greatest marts in the world, with every attendant advantage to the British general commerce, and the special interest of the East-India trade, might be established.

If measures were at this juncture taken, between the government and the East-India company, so that an East-India ship might annually stop at some island in the West-Indies; the traders, not only of the West-Indies, but of North America, would supply themselves with every advantage at such mart, not only for their own proper consumption, but also for a trade of the greatest extent: and this mart, in return, would

be to the East-India company, the collector of all the surplus silver of America, and perhaps even of some of the gold and ivory of Africa also. The extensive advantages of this measure cannot but be seen: nor would this any way interfere with that supply with which the East-India trade, by way of the Manilla's, furnishes the Spanish West-Indies, so far as our East-India company may be supposed to be concerned; but would, in other respects, open a better channel of trade between the East and West-Indies, which our company must command. The difficulties in the execution, lie in securing to government the revenue that should arise from the duties duly paid by this trade; and in securing the company against the perversion of this trade to the profit of their officers and servants.—

In the same manner, some revision of the state of the trade of the Colonies of the several maritime powers amongst each other, will be necessary.—The laws and ordinances of these, do in general prohibit all trade of foreign Colonies with their own—and yet, without some such trade, as supplies the Spanish provinces with British goods and provisions; as supplies the British Colonies with Spanish silver; as supplies the French islands with British lumber, fish, provisions, horses,

horses, and live stock ; as supplies the British Colonies with French melasses ; the trade and culture of these Colonies would be greatly obstructed and impaired ; and yet notwithstanding this fact, our laws of trade, by an impracticable duty, extend to the prohibiting the importation of French melasses into our Colonies.—If the government, under this law, could prevent effectually this importation ; not only into the northern Colonies, *but into the British isles also* ; the reward of that pains, would be the destruction of a beneficial branch of trade : perhaps of driving the British American distillery, into the French, Dutch, or Danish isles : or of forcing the French, contrary to their own false policy, into a profitable manufacture of that produce, which they now sell as refuse materials. I need not point out here the very essential change that this would make in the Colony trade.—On the contrary, it is the duty of government to permit, nay even to encourage, under proper regulations, these branches of trade in the first place, in order to extract out of the foreign Colonies, (to the benefit of the British commerce,) as much as possible the profits of these Colonies ; and which is more material, in order to create a necessary dependence, in the trade and culture of those Colonies, for their supplies on the British commerce. When it is

remembered that the law, which lays a duty equal to a prohibition, on the importation of French melasses in the British Colonies, was obtained at the solicitation of the British isles : it will be seen, that the obtaining this law is not so much meant to prohibit totally the introduction of French melasses into the British trade, as to determine a struggle between the West-India and North American traders, who should have the profits of it. And thus, from the predominant interest of these partial views, has government been led to embarrass the general courses of its trade. — But as the West-India traders see that this law has not (never had, and never will have) the effect proposed ; they will be better reconciled to its ceasing ; and as government must now, after the experiment, see the false policy of it ; * there is no doubt but that it will cease, so far as to reduce the duty to a moderate and practicable charge ; such as will be paid ; and such as will raise to the crown a very considerable revenue thus paid.

I speak not this by guess — but from a comparison of the quantity of sugars and melasses, brought to account in the custom-

* This measure hath, since the writing of the above, taken place by 6 Geo. 3. c. 52.

house books of the *King's revenue* ; with the quantity of the same article, in the same ports, brought to account in the impost-books of the *Colony revenue*, for six years together ; I could, with some precision, mark the extent of it. I own I did always apprehend that two-pence *per* gallon on foreign melasses imported into any British plantation, (and so in proportion of sugars,) was the best rate at which to fix this duty ; that being thus *moderate*, it might be easier and with less alarm and opposition collected, and might therefore the sooner introduce the practice of fair trade, and the sooner become an *effective revenue* : But when I see a groundless clamour raised, which represents the rate fixed by the late revenue-act, as destructive of the American distillery ; as ruinous to the American fishery ; as a prohibition of the returns made from the foreign islands for the North American fish ; I must own that I have never seen any fact stated, or calculation fairly made, on which such assertions found themselves.

The French isles, since the surrender of Canada and Louisiana, must depend entirely for their supplies of lumber, staves, heads, provisions, live stock, horses, &c. on the British Colonies, immediately exported from thence to those isles ; unless by some means
supplied

supplied from markets created at New Orleans and the island of St. Peter; as from another Isle of Man: it will therefore be the duty of government to keep a watchful eye to the formation and extent of these markets—so at least, if they be permitted, as to have the command of them; and so as to prevent their being, to the French traders, the means of supplying the Spanish markets also, as well as their own.

Since the writing of what the paragraph above contains; very proper regulations have been by the late American revenue-act provided; and if proportionate care be taken in the execution of it, this danger is for the present guarded against.

Some revision also will be necessary in the laws about naval stores; especially that respecting the masts. The present law, under an idea of preserving the White Pine or mast trees, directs, That no White Pines shall be cut or felled within the limits of any township, if not actually private property.—This part of the law arises from a mistaken apprehension of a township; there being no lands within such, but what are private property.—
2^{dly}, That no pines out of a township, of the dimensions of 24 inches and upwards diameter, at the height of 20 inches from the ground,

ground, shall be felled.—This part of the law is *felo de se*. — Those who find their profits in cutting down these trees for logs, or making shingles, &c. or who know the embarrassments which would arise to their property, if they should ever apply for a grant of these lands, by letting such Pine-trees, the property of the crown, grow there; never (if they have not other means to evade this law) will permit these Pines to come to *this dimension*, which makes them royal property. The false policy of this law, and the defects in the establishment of an office of surveyor-general of his Majesty's woods, will soon (if not obviated) be felt in the scarcity and price of masts, which will be the effect of it. The necessity of their going a great distance from the rivers, for the masts, has already taken effect; and the case of there being none within any practicable distance, will soon follow. The navy-office finding that their mast-ships do come regularly hitherto to England, cannot entertain any fear of such want, and it will be the interest of others to suppress and contradict this fact; yet it is a fact; and will be soon known in its effects. On the contrary, if it is considered how disproportionate a value the price of the Pine-tree growing, bears to the price of the mast when brought in the middle of winter, over the snow, with 70 or 80 yoke

yoke of oxen to the water-side ; if, instead of aiming to make these trees, thus growing, *royal exclusive property* ; the crown was not only to permit a free masting in lands not granted ; and to make the mast-trees, of all dimensions, *private property* on lands actually granted ; but also (as it is done in other cases of naval stores) to give a bounty besides the price, to the person who should bring down any such masts to the water-side ; it would have an immediate effect in supplying the crown with masts at a cheaper rate ; and in the preservation of these trees, thus become a branch of trade.

I would wish here also to recommend the giving some advantages and encouragement to the importation of American timber into Great Britain *.

I have not gone into the thorough examination of these subjects above-mentioned ; nor have I pointed out, in all their consequences, the effects that this or that state of them would have. I have only pointed them out as worthy the attention of government : and, I am sure, whenever government takes them under consideration, they will be better

* This has been done, by an act of 1766, since this was first written and published.

understood,

understood, than any explanation of mine can make them.

Were some such arrangements taken for a revision and further establishment of the laws of trade, upon the principle of extending the British general commerce, by encouraging the trade of the Colonies, in subordination to, and in coincidence therewith; the trade of the Colonies would be administered by that true spirit from whence it rose, and by which it acts; and the true application of the benefits which arise to a mother country from its Colonies, would be made. Under this spirit of administration, the government, as I said above, could not be too watchful to carry its laws of trade into effectual execution.—But under the present state of those laws, and that trade; there is great danger that any severity of execution, which should prove effectual in the cases of the importation into the Colonies of foreign European and East-India goods; might force the Americans to trade for their imports, upon terms, on which the trade could not support itself; and therefore become in the event, a means to bring on the necessity of these Americans manufacturing for themselves. Nothing does at present, (with that active and acute people,) prevent their going into manufactures, except the proportionate dearth of labour,
as

as referred to the terms on which they can import : but encrease the price of their imports, to a certain degree : let the extent of their settlements, either by policy from home, or invasion of Indians abroad, be confined ; and let their foreign trade and navigation be, in some measure, suppressed ; their paper-currency limited within too narrow bounds ; and the exclusion of that trade which hath usually supplied them with silver-money, too severely insisted upon — this proportion of the price of labour, will much sooner cease to be an object of objection to manufacturing there, than is commonly apprehended. The winters in that climate are long and severe ; during which season no labour can be done without doors : That application therefore of their servants labour, to manufactures for home consumption ; which under any other circumstances, would be too dear for the product created by it ; becomes, under these circumstances, all clear gains. And if the Colonists cannot on one hand, purchase foreign manufactures at any reasonable price, or have not money to purchase with ; and there are, on the other, many hands idle which used to be employed in navigation ; and all these, as well as the husbandmen, want employment ; these circumstances, will soon overbalance the difference of the rate of labour, in

in Europe and in America: And if the Colonies, under any future state of administration, which they see unequal to the management of their affairs, *once come to feel their own strength in this way*; their independence on government, at least on the administration of government, will not be an event so remote as our leaders may think; which yet nothing but such false policy can bring on. For, on the contrary, put their governments and laws on a true and constitutional basis; regulate their money, their revenue, and their trade; and do not check their settlements;—they must ever depend on the trade of the mother country for their supplies—they will never establish manufactures—their hands being elsewhere employed, and the merchants being always able to import such, on * terms that must ruin the manufacturer.

* This is a fact too well known and understood to need any particular proof—but if need were, the writer of these papers could demonstrate this from the prices of wool, hemp, and flax, and the labour of carding, dressing, spinning, weaving, &c. in North America; compared with the prices of the same articles of produce and labour in Britain. It is therefore an idle vaunt in the Americans, when they talk of setting up manufactures *for trade*; but it would be equally injudicious in government here to force any measure that may render the manufacturing for *home consumption* an object of prudence, or even of pique in the Americans. And yet after all, should any thing of this sort extend itself
to

turer. Unable to subsist without, or to unite against the mother country; they must always remain subordinate to it, in all the transactions of their commerce, in all the operation of their laws, in every act of their government:—The several Colonies, no longer considered as demesnes of the crown; mere appendages to the realm; will thus become united therein; members and parts of the realm; as essential parts of a one organized whole, *the commercial dominion of Great Britain*—THE TAKING LEADING MEASURES TO THE FORMING OF WHICH, OUGHT, AT THIS JUNCTURE, TO BE THE GREAT OBJECT OF GOVERNMENT.

to a degree that interfered with the exports of Great Britain to the Colonies——the same duties of an excise which lie upon the manufactures of Great Britain, levied upon those of America, would soon restore the balance. This consideration, one might imagine, would induce those who are prudent in America, to advise the rest to moderation in their opposition.

END OF THE FIRST VOLUME.

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Staatsbibliothek
München



Pownall, Thomas

The administration of the British colonies In 2 Vols

Bd.: 1. - XV, 238 S.

London 1774

H.e.e. 220 e-1

urn:nbn:de:bvb:12-bsb10434578-8